

IN THE CIRCUIT COURT OF
 THE ELEVENTH JUDICIAL CIRCUIT
 IN AND FOR DADE COUNTY, FLORIDA
 GENERAL JURISDICTION DIVISION

NORMA R. BROIN, et al.,
 Plaintiffs,
 vs. CASE NO. 91-49738
 CA 22

PHILIP MORRIS COMPANIES,
 INC., et al.,
 Defendants.

 TRIAL
 VOLUME 86

TRANSCRIPT OF PROCEEDINGS in the
 above-styled cause before the Honorable Robert Paul
 Kaye, at the Dade County Courthouse, 73 West Flagler
 Street, Miami, Florida, on Friday, August 15, 1997,
 at 1:40 p.m.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.
 SUSAN ROSENBLATT, ESQ.
 On behalf of the Plaintiffs
 HUGH R. WHITING, ESQ.
 JONES DAY REAVIS & POGUE
 On behalf of R.J. Reynolds
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THOMASINA MOORE, ESQ.
 ANDERSON MOSS SHEROUSE & PETROS
 On behalf of Brown & Williamson
 DAVID L. ROSS, ESQ.
 GREENBERG TRAURIG, et al.
 On behalf of Lorillard
 DAVID HARDY, ESQ.
 SHOOK HARDY & BACON
 On behalf of Lorillard and Philip Morris
 KELLY ANNE LUTHER, ESQ.
 CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
 On behalf of Liggett and Brooke Groups
 MICHAEL RUSS, ESQ.
 and RICHARD SCHNEIDER, ESQ.
 KING & SPALDING
 On behalf of Brown & Williamson and American
 Tobacco Company
 JOSEPH R. MOODHE, ESQ.
 DEBEVOISE & PLIMPTON
 On behalf of The Council for Tobacco Research
 JOSE MARTINEZ, ESQ.
 MARTINEZ & GUTIERREZ
 On behalf of Philip Morris
 JEFFREY FURR, ESQ.
 WOMBLE & CARLYLE
 On behalf of R.J. Reynolds
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1 (The following proceedings were had in open
2 court, outside of the presence of the jury:)

3 THE COURT: Okay. We had one more,
4 one more left, before we get going. Okay. We've
5 gone through that. Do you want to say something?

6 MS. ROSENBLATT: That's done. They
7 have completed in terms of the Brown & Williamson
8 document, and we have gone through Merryman and
9 Dawson.

10 MR. RUSS: What I would like to do,
11 Judge, before we get started, is yesterday the Court
12 asked -- with respect to the Liggett documents, we
13 have accumulated the material. Here is a copy for
14 plaintiffs' counsel and a copy for the Court.

15 Just to tell you what we have, we have got a
16 very short brief. Believe it or not, it is short.
17 And we have got a chronology of the events that we
18 think are relevant; that is, the history of the
19 plaintiffs' position with respect to the documents,
20 with the attached transcript references. And we
21 also have copies of the authorities.

22 So this is a package that I think will
23 prepare us to deal with the Liggett document issue
24 when the Court is ready to entertain it.

25 MS. ROSENBLATT: What I would do is
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1 over the weekend I will review this response and
2 hopefully have something to the Court by Monday,
3 Monday or Tuesday.

4 THE COURT: While doing this, how much
5 longer do you think you have got before you rest?

6 MS. ROSENBLATT: We were just
7 discussing that. Without a lot of argument on
8 exhibits -- there's a lot of exhibits -- you know,
9 there would be no problem with having it all
10 presented and completed by Wednesday.

11 Anticipating argument over exhibits, and
12 there are many exhibits in this case, as well as the
13 argument on Liggett, we are probably talking about
14 going through the following Monday or Tuesday.

15 THE COURT: We have Thursday and Friday
16 off.

17 MS. ROSENBLATT: Because Thursday and
18 Friday are off. So because of that now, defense---

19 THE COURT: In other words, no live
20 testimony.

21 MS. ROSENBLATT: We are not having any
22 more live testimony. We have the one video, which
23 is probably about an hour, an hour or so, in terms
24 of---

25 THE COURT: A few depositions and

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1 then---

2 MS. ROSENBLATT: Depositions and a lot
3 of exhibits. Now, what we had discussed during the
4 break, I discussed with defense counsel, who had
5 agreed subject to Your Honor's determination, is
6 perhaps spending all day Monday going through the
7 balance of depositions and starting with some of the
8 objections to exhibits, and they are going to tell
9 me which exhibits they don't object to.

10 We gave them a preliminary list, the first
11 phase, this morning, of exhibits we want to place in
12 evidence, as opposed to having just a few
13 depositions read and then going part of the day.
14 So, to try to get a lot done, 9:00 to 5:00, all day
15 Monday, because there still are a number of
16 depositions we have got to go through.

17 THE COURT: What you are telling me is
18 you don't need a jury on Monday.

19 MS. ROSENBLATT: That's what we felt.
20 We could have one for an hour or two, but it
21 wouldn't be a full day because there's things we
22 need to take up with the Court.

23 THE COURT: Actually, how many more
24 depositions do you have?

25 MS. ROSENBLATT: I had it written down,
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1 if I could find my page. I think about 12, 12 to 13
2 total that we are talking about.

3 So it would -- we have Arthur Stephens. We
4 have a CEO of American Tobacco, Donald Johnston. We
5 have the executive director of the American Thoracic
6 Society, the videotape of Carl Booberg.

7 THE COURT: Why don't you just put a
8 package of those together for me. I will take as
9 many home over the weekend and go through them -- if
10 that's what you want to do.

11 MS. ROSENBLATT: Well---

12 THE COURT: Not that I am---

13 MS. ROSENBLATT: We feel guilty. You
14 are putting in long days. We can -- and I think
15 that some of these things, you know, I am also
16 trying to cut back a little, you know, basically do
17 it---

18 THE COURT: In other words, I don't
19 really want to waste the jury's time. Can we do it
20 in one day, all 12?

21 MS. ROSENBLATT: I think so. Because
22 we are going to try to cut back some of what we have
23 also, you know, designated, now that I anticipate---

24 MR. ROSENBLATT: You developed a
25 pattern of rulings pretty much, you know, so your

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1 rulings come much quicker. The arguments are much
2 shorter, in terms of the depositions.

3 MS. ROSENBLATT: As I go through now, I
4 will know the types of questions that you are going
5 to keep out, so I think I could probably cut a few
6 back.

7 We also have Celermajer. That was the
8 Australian cardiologist. We have portions that are
9 designated. I don't think we have gotten the
10 objections. You know, we have a limited amount of
11 his deposition. We wanted to -- we have a few
12 scientists left. There were very limited portions.
13 I think we could probably get through all of that on
14 Monday.

15 THE COURT: Is she realistic?

16 MR. HARDY: Well, I don't know, but we
17 certainly agree with plaintiffs' counsel that it
18 would be a good idea, if it's all right with Your
19 Honor, to spend a full day doing what she's talking
20 about and not have the jury come back until Tuesday
21 morning. Because we think that would at least put
22 us in a position where we could spend something
23 approaching full days with the jury on Tuesday and
24 Wednesday.

25 THE COURT: This in and out is a real
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1 problem for them.

2 MR. HARDY: As far as that goes, that's
3 fine.

4 We do believe, as other counsel indicated
5 this morning, that some of these depositions are
6 cumulative, and we have points to make about that.
7 But that's for the argument on Monday, without the
8 jury.

9 THE COURT: All right. Then, just to
10 get a feel of what's going on, if they rest, you'll
11 say next week---

12 MR. HARDY: Yes. Mrs. Rosenblatt---

13 THE COURT: Labor Day I guess is what
14 we are talking about, day after Labor Day.

15 MR. HARDY: She had told me that I
16 should plan on them resting sometime in the early
17 part of the week of the 25th. That's the week
18 that -- that's a four-day week. We have no court on
19 Friday.

20 The defendants will have---

21 THE COURT: I think it's Thursday and
22 Friday.

23 MS. LUTHER: No. We're talking about
24 the week after, Judge. Labor Day weekend.

1 Thursday and Friday.

2 THE COURT: That's what I am saying,
3 next week is no Thursday and Friday. That will take
4 us into---

5 MS. ROSENBLATT: We are going into the
6 following week. Probably on Monday.

7 MR. HARDY: Monday, the 25th.

8 MS. ROSENBLATT: Monday is August 25.

9 MR. HARDY: That week is a four-day
10 week.

11 THE COURT: That's right. Because of
12 the Labor Day holiday. That's right. I need to see
13 what we are talking about here, the 25th, Monday,
14 that we are talking about.

15 MR. HARDY: Defendants will have some
16 absolutely riveting motions for directed verdict.
17 If there is any of the case left then, we will need
18 to come back.

19 THE COURT: We will probably be doing,
20 as I understand it, then -- today is the 15th. They
21 don't come back until the 19th. Take Monday -- the
22 18th, the 19th, and 20th. We present those
23 depositions, whatever it is, to them.

24 You are about to rest on that date, but are
25 not really sure.

1 MS. ROSENBLATT: I don't think we can
2 rest then because there's too many exhibits.

3 THE COURT: Two days off.

4 MS. ROSENBLATT: We have to publish
5 exhibits.

6 THE COURT: Okay.

7 MS. ROSENBLATT: 25th or 26th.

8 THE COURT: Come back on the 25th.

9 MS. ROSENBLATT: That day or the 26th
10 we are probably realistically going to rest with all
11 the loose ends.

12 THE COURT: We only have two days left
13 of that week.

14 MR. HARDY: Defendants will have a
15 motion that.

16 THE COURT: A day or two for the
17 motions. That week is taken care of. You wouldn't
18 be able to really start until September 2nd.

19 MR. HARDY: We would start at the
20 latest, right.

21 THE COURT: That's what I thought.

22 MR. HARDY: Tuesday the 2nd.

23 THE COURT: You figure you have got
24 two, three, four, five?

25 MR. HARDY: We have a maximum of three

1 weeks, meaning -- let me put it this way. I think
2 we have between 10 and 15 court days, the best we
3 can figure.

4 THE COURT: Okay. Then a couple days
5 for more arguments and jury conferences. We'll run
6 smack up to October. Close.

7 Okay. So if we are ready -- I guess you're
8 ready.

9 Are you getting paid per---

10 MR. SCHNEIDER: Per case.

11 MR. ROSENBLATT: The first thing I am
12 going to do is read, publish the---

13 MR. SCHNEIDER: '78, '79.

14 MR. ROSENBLATT: '78 or '79.

15 MR. SCHNEIDER: Okay. The way to
16 identify it is the Brown & Williamson employee
17 handbook.

18 THE BAILIFF: Bringing in the jury.

19 (The jury entered the courtroom and the
20 following proceedings were had:)

21 THE COURT: All right. I think we are
22 about ready. Do you have another presentation?
23 This time it's going to be what?

24 MR. ROSENBLATT: An exhibit, a Brown &
25 Williamson employee handbook, Exhibit 155, which is

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1 in evidence.

2 THE COURT: You want to publish
3 portions thereof?

4 MR. ROSENBLATT: Yes.

5 THE COURT: Both sides will read or
6 have read certain portions of that document to the
7 jury.

8 MR. ROSENBLATT: This document was
9 disseminated either in 1978 or 1979, and I have
10 designated certain portions that I want to read to
11 the jury and counsel, Mr. Russ, for Brown &
12 Williamson, has designated other portions that he
13 wants to read to the jury. And I will let you know
14 which is which as we begin.

15 The first segment is called Public Smoking
16 and this, what I am going to read to you now, is my
17 designation: In 1971, Jesse L. Steinfield, M.D.,
18 then U.S. Surgeon General, advocated the prohibition
19 of smoking in confined public places, such as
20 restaurants, theaters, airplanes, trains and buses,
21 because the nonsmoker might be injured by ambient
22 tobacco smoke; that is, tobacco smoke in the
23 atmosphere.

24 Mr. Russ is designating this paragraph:
25 Steinfield's statement gave antismoking groups an

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1 effective theme. The antismoking organizations
2 adopted the objective that smoking should be made
3 socially unacceptable. They began a mass invasion
4 of state capitals and city halls to argue that laws
5 must be enacted to protect the nonsmoker from
6 ambient tobacco smoke forced on him by smokers in
7 public places.

8 Then there is a section called Chronology
9 and it gives various dates. Okay. This is my
10 designation: 1973. Thirty-six bills proposed in 18

11 states; five enacted. Many municipalities enacted
12 restrictive ordinances. The Civil Aeronautics Board
13 ordered commercial airlines to separate smokers and
14 nonsmokers.

15 Then we go to 1974: Sixty-two bills
16 proposed in 29 states; five enacted. Several
17 municipal ordinances restricting smoking also were
18 enacted. The Interstate Commerce Commission
19 restricted smokers to the rear 20 percent of seating
20 space on interstate buses.

21 Then we go to the year 1975: One hundred
22 sixty restrictive smoking bills introduced in 48
23 states; 17 enacted. The Minnesota Clean Indoor Air
24 Act restricted smoking in a broad range of public
25 and commercial areas. The New York Health

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1 Department prohibited smoking in public areas,
2 including supermarkets.

3 Going to 1976: One hundred sixty-one bills
4 proposed in 39 states; eight were enacted, including
5 the Utah Clean Indoor Air Act, another broad no
6 smoking bill.

7 Then we go to the year 1977: One hundred
8 thirty-six restrictive bills introduced in 44
9 states; 13 were enacted. The General Services
10 Administration (the caretaker for U.S. Government
11 buildings), the State Department and the Department
12 of Defense, enacted restrictive smoking guidelines
13 for buildings under their control.

14 What I'm going to read now is designated by
15 Mr. Russ. It's still in the year 1977.

16 The FAA rejected a petition by a Nader group
17 which requested a prohibition against smoking by
18 pilots on the flight deck of airliners. The CAB
19 voted to prohibit pipe and cigar smoking in
20 interstate airlines and announced that it would
21 consider a rule prohibiting cigarette smoking.

22 Antismoking groups have continued to enjoy
23 their greatest successes at the local government
24 level.

25 And my designation: Most major cities now
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1 have restrictive smoking ordinances.

2 Then there is a section which is called The
3 Laws and Enforcement. And this is Mr. Russ's
4 designation: Yet the primary impact of smoking
5 restriction laws may be the creation of a no-smoking
6 norm in public places.

7 MR. RUSS: This is you.

8 MR. ROSENBLATT: This is my
9 designation: The Commissioner of Dade County,
10 Florida, admitted that that county's antismoking
11 ordinance was virtually unenforceable but added:

12 But it's being morally enforced; it's the
13 people, the people in the elevators, the clerks in
14 the stores and the nonsmokers in the check-out
15 lines, who by their remarks to offenders are
16 enforcing the law. It's being enforced by people
17 who want to obey the law and I'd say it was 85

18 percent to 90 percent effective.

19 Mr. Russ's designation: The impact of
20 no-smoking laws on the cigarette market has not been
21 accurately measured.

22 And then what follows is my designation, but
23 obviously it's all coming the same document.

24 However, to gauge the impact, it is helpful
25 to remember that the average smoker in the United

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1 States consumes one and a half packs per day. If it
2 is assumed that smoking prohibitions in public
3 places caused the average smoker to consume one
4 cigarette per day, total consumption in the U.S.
5 would be reduced by 1/30th.

6 Then there is a section called The Medical
7 Facts. In 1971, Jesse L. Steinfeld, M.D., who
8 served as U.S. Surgeon General from 1968 to 1973,
9 said:

10 Evidence is accumulating that the nonsmoker
11 may have untoward effects from the pollution his
12 smoking neighbor forces upon him. It is high time
13 to ban smoking from all confined public places such
14 as restaurants, theaters, airplanes, trains, and
15 buses.

16 This is a designation by Mr. Russ: There
17 was no evidence in the speech, and there had been no
18 evidence in Previous Public Health Service reports
19 to Congress on smoking and health signed by the
20 Surgeon General (commonly called the Surgeon
21 General's report). In fact, a previously published
22 PHS booklet entitled "Smoking, Health, and You"
23 stated that the smoke from other people's cigarettes
24 "may make your eyes tear or may make you cough, but
25 it cannot harm you."

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1 Antismoking groups have repeated
2 Dr. Steinfeld's claims in forums throughout the
3 United States and have expanded them to include
4 assertions about a variety of potential injuries to
5 nonsmokers from exposure to ambient tobacco smoke.

6 And this is my designation: The
7 antismokers' claims that nonsmokers can be injured
8 by ambient tobacco smoke are not supported by
9 scientific evidence.

10 And this is Mr. Russ's designation: In
11 1977, the FAA considered a petition by antismoking
12 groups requesting --

13 MR. RUSS: A rule.

14 MR. ROSENBLATT: I couldn't read it on
15 my copy.

16 -- requesting a rule prohibiting tobacco
17 smoking on the flight deck. This -- their
18 contention was that exposure to relatively low
19 levels of carbon monoxide causes substantial
20 impairments to vital brain and nervous system
21 functions. The FAA carefully considered several
22 studies and ruled that the petition did not disclose
23 adequate reasons to justify the rule it requested.

24 Continuing with Mr. Russ's designations: It

25 is interesting to note a few carbon monoxide
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1 equivalents. One automobile driven 12-1/2 miles
2 emits more carbon monoxide than a 1.4-pack-per-day
3 smoker contributes to the atmosphere in an entire
4 year. A Washington, D.C. Counsel of Governments
5 study found that cars and trucks account for 92
6 percent of the carbon monoxide released into that
7 region's air. The FAA measurements of carbon
8 monoxide emissions from one Boeing 707 in its 33
9 minute landing-takeoff cycle is 202 pounds, the same
10 amount as emitted from smoking 1.3 million
11 cigarettes.

12 And then there is a section called The
13 Non-Problem problem, and this is Mr. Russ's
14 designation: A study of cigarette smoking in
15 aircraft conducted jointly by HEW, the FAA and the
16 Department of Transportation concluded that the
17 inhalation of ambient tobacco smoke aboard
18 commercial aircraft "does not represent a
19 significant health hazard to nonsmoking passengers."
20 The result of the study was first announced in 1970,
21 prior to the time of Surgeon General Steinfeld's
22 statement that evidence showed ambient tobacco smoke
23 could be harmful to nonsmokers.

24 And continuing with Mr. Russ's designation:
25 Doctor E. Cuyler Hammond, vice-president,

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1 Epidemiology and Statistical Research, of the
2 American Cancer Society, and author of famous
3 studies linking smoking and lung cancer, was
4 reported to have made statements to the
5 International Conference on Public Education About
6 Cancer in 1974 as follows:

7 Dr. Hammond stated that there was "no shred
8 of evidence that a nonsmoker can get cancer from
9 'secondhand' smoke and there is a lot of evidence
10 that he cannot...." He added that to suggest passive
11 smoking (inhalation of smoke by nonsmokers) could
12 cause cancer is dishonest, and that he would be
13 prepared to testify as much in court.

14 And this is my designation: It is apparent
15 that antismokers' claims that nonsmokers are subject
16 to injury by ambient tobacco smoke are not supported
17 by scientific evidence.

18 Now we come to a section of the employee
19 handbook which is called Checklist of Arguments.
20 And it goes down a whole series of questions and
21 answers, and it begins as follows, with my
22 designation.

23 The following suggestions are intended to be
24 guides for writing or speaking in response to
25 antismoking arguments on public smoking actions. It

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1 is important to remember that health or scientific
2 arguments can be ineffective in communicating with
3 the general public. On the other hand, most people

4 can clearly identify with arguments based on freedom
5 of choice, and many people feel strongly that the
6 "hand of government" should not interfere with their
7 private lives.

8 "The public smoking issue" can be resolved
9 on the basis of common courtesy. Most smokers will
10 show respect for the wishes of those around them.

11 Public smoking laws present grave
12 enforcement problems. During the prohibition era
13 this country learned of the great difficulty
14 government has in enforcing matters of social
15 morality and conduct. Unless the police go on
16 rounds to arrest an individual as soon as the person
17 lights up in a no-smoking area, it will be
18 practically impossible to enforce public smoking
19 laws effectively.

20 Still under the same section of the
21 checklist of questions and answers, this is a
22 designation by Mr. Russ.

23 Question: How far will government go to
24 restrict our private lives?

25 There are obviously many public annoyances
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1 to everyone in their daily lives. The "bad" or
2 conflicting behavior and manners of other people in
3 public places can cause substantial irritation. The
4 noise and fumes of heavy traffic, the
5 dissatisfaction toward public services like
6 sanitation and law enforcement, the irritation from
7 dirty streets, barking dogs, noisy neighbors, or
8 even the weather can certainly be more severe than
9 the diffused smell of tobacco smoke in a ventilated
10 public place.

11 Should laws -- should laws also be passed to
12 ensure good manners and behavior, and, if so, by
13 whose standards? Any effort to extend government
14 regulation into these areas would result in a
15 massive interference with an individual's personal
16 life and freedoms.

17 Here we get to a section in the employee
18 handbook which is called Questions & Answers.

19 Individuals associated with the tobacco
20 industry often are confronted by thought-provoking
21 questions regarding smoking and health, public
22 smoking and other issues which make up the
23 controversy surrounding the industry. In the past,
24 employees have not been adequately equipped to deal
25 with these questions. Brown & Williamson prepared

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1 this handbook in an effort to inform employees with
2 a depth of knowledge surrounding the issues.

3 The following section includes a series of
4 questions and answers covering a variety of issues.
5 These questions have been accumulated from media
6 interviews and discussions with a variety of groups
7 by Brown & Williamson and industry spokespersons.
8 The following questions and answers are not intended
9 to make "spokespersons" out of Brown & Williamson
10 employees, but they are intended to better inform

11 our managers.

12 And then we have a series of Q and A,
13 questions and suggested answers.

14 Question: Does smoking cause lung cancer,
15 emphysema, cardiovascular disease and bronchitis.

16 Answer: No one knows. Scientific research
17 has not established that smoking causes illness. We
18 all know some scientists have said smoking causes
19 illness, but many respected scientists believe cause
20 has not been shown. More research is needed.

21 Question: How can you deny the overwhelming
22 statistical evidence that smoking causes disease?

23 Answer: The case against smoking is based
24 almost entirely on inferences from statistics. But
25 most scientists will agree that statistical

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1 associations cannot establish cause and effect.
2 Statistical associations are only clues which show
3 the need for clinical and laboratory experiments.
4 There are other flaws in the statistical argument,
5 such as the reliability of the data. By the way,
6 there is a statistical association between lung
7 cancer and the use of electric razors. We need more
8 biological research.

9 Question: Do you deny that smoking is
10 hazardous to your health?

11 Answer: No one knows. Many respected
12 scientists believe that a causal relationship
13 between cigarette smoking and illness has not been
14 proven.

15 Question: How can you smoke when you know
16 you are causing health problems to nonsmokers in the
17 same room?

18 Answer: Smoke in the ambient air is not
19 harmful to the health of the nonsmoker. Even
20 medical experts who have been associated with the
21 charge that smoking causes lung cancer in the smoker
22 have said that smoke in the ambient air has no
23 influence on the health of the nonsmoker.

24 Question: Why are manufactures producing
25 more low tar and nicotine cigarettes and advertising

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1 those brands heavily if there is no health risk
2 involved in smoking high tar and nicotine
3 cigarettes?

4 Answer: Cigarette manufacturers are
5 producing low tar and nicotine cigarettes in
6 response to consumer demands for those products.
7 Your perception of the growth of the low tar segment
8 is correct. Sales of cigarettes with less than 15
9 milligrams tar content increased by more than 50
10 percent in 1976 and comprised roughly 25 percent of
11 the total cigarette market in 1977. Only a few
12 years ago low tar and nicotine cigarettes were an
13 insignificant part of the market. This very rapid
14 shift shows the cigarette manufacturers eagerness to
15 respond to customers' changing preferences. The
16 advertising emphasis simply follows the shift in
17 consumer demand. No cigarette manufacturer has said

18 there is no health risk involved in smoking high tar
19 and nicotine brands. As with the question of
20 smoking and disease in general, no one knows.

21 Question: Does the cigarette industry feel
22 some responsibility for the \$8 billion cost to the
23 United States for health care and \$18 billion cost
24 to the United States in loss of production time
25 caused by cigarettes sold?

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1 Answer: The charge is based on the
2 assumption that smoking causes illness, but
3 causation has not been established by scientific
4 research. There are other difficulties with the
5 figures. For example, the figures assume the need
6 for health services included would disappear if no
7 one smoked cigarettes. With our aging population,
8 this is unlikely.

9 Question: Does the nonsmoking majority in
10 this country have the right to vote that cigarettes
11 should not be smoked in public places?

12 Answer: No. Such a law would be completely
13 unjustified as a function of government in our
14 society. Tolerance is the cornerstone of this
15 country's democracy. There is no health danger to
16 nonsmokers -- the problem is annoyance.

17 This is a social matter which must be left
18 to people to resolve in social situations through
19 mutual courtesy. Laws dictating personal social
20 conduct, arrests, fines, and forced segregation are
21 inappropriate means of dealing with a social
22 situation. If there are going to be laws
23 prohibiting smoking in public places, there should
24 certainly be laws prohibiting strong perfume, body
25 odor, and untrained pets.

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1 Question: What would you tell your child if
2 he asked you whether he should smoke cigarettes?

3 Answer: I would tell him to wait until he
4 was an adult and then make up his own mind. Whether
5 to smoke is a choice for the individual and a choice
6 that should be made only by informed adults.

7 Question: How do you account for the fact
8 that so many government and scientific societies
9 have passed resolutions asserting that smoking
10 causes lung cancer and other human diseases?

11 Answer: The fact that government bodies and
12 scientific societies have passed such resolutions
13 indicates that the continuing controversy over
14 smoking and health is political, not scientific.
15 Scientific issues in the medical field are settled
16 by definitive biological experimentation, not by the
17 passage of a resolution.

18 There have been no experiments proving that
19 cigarette smoking causes illness, and that is why
20 activists in government agencies and scientific
21 organizations have resorted to resolutions to
22 establish their personal opinions.

23 Question: Don't all of the medical experts
24 in the United States agree that smoking causes lung

25 cancer?

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1 Answer: As a matter of fact, many
2 scientists in the United States hold the view that
3 smoking has not been scientifically established as a
4 cause of lung cancer. They note that no one knows
5 the cause or causes of lung cancer. Nor does anyone
6 know the mechanism or mechanisms whereby this
7 disease develops.

8 Question: Won't you concede that smoking is
9 a prime suspect as a cause of lung cancer?

10 Answer: Scientists generally agree that
11 lung cancer is a multifactorial disease. It has
12 been statistically associated with many factors.
13 These include occupation, geographical location,
14 sex, urbanization, and several others as well as
15 smoking. But factor does not mean cause. Whether
16 any of these suspects plays a role in the causation
17 of this disease is as yet unknown.

18 Question: Aren't there cancer-causing
19 agents in tobacco smoke? Don't they explain the
20 association between smoking and lung cancer?

21 Answer: For more than 20 years now, cancer
22 researchers have been trying to identify components
23 in tobacco smoke that are harmful to human health.
24 To date, however, they have not identified any
25 ingredient or group of ingredients, as found in

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1 tobacco smoke, that are disease-producing in humans.

2 Question: Hasn't lung cancer in women begun
3 to increase as they have begun to smoke more?

4 Answer: There has long been a wide gap
5 between the incidence of lung cancer in males and
6 females and this gap has not been satisfactorily
7 explained in terms of smoking. As to the recent
8 reports of increased cancer in women, some
9 scientists believe that this disease has been
10 increasing in women for many years, which is not
11 consistent with a smoking-causation hypothesis.

12 There are other considerations. For
13 example, the lung cancer increase reported in women
14 is usually of a different type from those reported
15 as predominant in men and, in fact, is a type not
16 generally considered associated with smoking.

17 Question: What about heart disease? Isn't
18 it pretty well established that smoking causes this
19 disease?

20 Answer: Heart disease is a multifactorial
21 disease; that is, one which has been statistically
22 associated with many factors. So far, more than 20
23 factors have been identified. Factor does not mean
24 cause. No one knows whether any of the observed
25 factors plays a role in the causation of the

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1 disease.

2 Recent studies of identical twins suggest
3 that a person's genetic background may be the more

4 important -- the most important factor. Other
5 studies indicate that a person's personality type is
6 the prime factor.

7 Question: Aren't cigarettes addictive?
8 Answer: It is difficult to discuss
9 addiction today, because people apply the term to
10 many different circumstances. Some people say they
11 are addicted to chocolate; others say their children
12 are addicted to TV. The 1964 Surgeon General's
13 Report concluded that cigarettes should be
14 classified as habituative, like coffee, and not
15 addictive, like morphine.

16 Many people have given up smoking. Why do
17 some people continue to smoke who say they want to
18 quit? Why do people continue to overeat when they
19 say they are too fat?

20 Question: What is the tobacco industry
21 doing to help resolve the smoking and health
22 controversy?

23 Answer: In the last 24 years, the tobacco
24 industry has provided more than \$70 million for
25 independent research regarding questions related to

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1 smoking and health. In many of these years this
2 commitment has exceeded that of any government
3 department, and has been substantially more than the
4 research expenditure reported by all the voluntary
5 health associations, who spend a major portion of
6 their donated funds for administration and for
7 public relations campaigns. The tobacco industry is
8 committed to advancing scientific inquiry in this
9 area.

10 Question: Do the tobacco companies control
11 the research they sponsor?

12 Answer: Absolutely not. The commitment of
13 the tobacco manufacturers to resolve the smoking and
14 health controversy has never been fully appreciated.
15 Grants are made with no strings attached except a
16 pledge to apply the money to legitimate scientific
17 research. Each researcher is free to publish his
18 study results, whatever they may be.

19 Question: Does it bother your conscience to
20 sell cigarettes?

21 Answer: Absolutely not. The tobacco
22 industry is a \$15 billion industry affecting 17
23 million people. As far as the health question is
24 concerned, no valid research has ever established
25 that cigarette smoking causes illness.

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1 Nevertheless, every pack of cigarettes carries a
2 warning label as required by law.

3 A person would have to be a cave dweller not
4 to be aware of the warning. We live and work in a
5 country which supports the free enterprise system.
6 It gives its citizens the freedom of choice. We
7 should continue to enjoy that freedom, both in our
8 business and in our personal lives.

9 Then there is a general section called
10 Smoking And Health, and then a subsection which is

11 called Smoking And Pregnancy. Okay.
12 Smoking And Pregnancy. Claims have been
13 made that smoking during pregnancy causes adverse
14 effects, in particular that smokers are more likely
15 to have low birth weight infants. Some claims have
16 been made that smoking increases the risk of
17 congenital malformation and perinatal mortality.
18 However, these claims are based on statistical data
19 which are at best equivocal and, furthermore, cannot
20 prove causal relationships. Moreover, there are
21 data which are inconsistent with certain of these
22 claims.

23 Low birth weight infants. A biostatistician
24 who examined and was unable to accept the causal
25 hypothesis contended that the data he studied may

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1 suggest the existence of some other common factor
2 which causes women both to smoke and to have a
3 higher proportion of low birth weight infants.

4 Yerushalmy advanced this theory in a 1972
5 report describing data which he later said almost
6 clinched the argument against causation. This
7 conclusion follows from the finding that women who
8 eventually become smokers produced a large
9 proportion of low birth weight infants even before
10 they started to smoke.

11 To explain these findings, Yerushalmy
12 speculated that the higher incidence of low birth
13 weight infants among smoking women may be due to the
14 smoker, rather than the smoking.

15 Despite much repetition of the claim that
16 certain substances in tobacco smoke are harmful to
17 the smoker, it has not been scientifically proven
18 that any component or combination of components as
19 found in tobacco smoke causes disease.

20 These claims, which focus primarily on tar,
21 nicotine, and carbon monoxide, have led to proposals
22 for establishing maximum levels of such substances
23 in tobacco smoke. Such a recommendation currently
24 is being considered by the Department of Health,
25 Education and Welfare as part of a major antismoking

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1 initiative launched by Secretary Joseph Califano.

2 Then there is a section called Research.

3 And I am getting to the end.

4 The scientific commitment of the tobacco
5 industry is clear. For nearly 25 years the
6 cigarette manufacturers have been supporting totally
7 independent research with completely non-restrictive
8 funding. The results, whatever they are, may be
9 published wherever the researcher chooses.

10 Hundreds of researchers in medical schools,
11 hospitals, and other scientific institutions in this
12 country and abroad have received more than \$70
13 million from the tobacco industry to support their
14 investigations. The findings of scientific studies
15 funded, in whole or in part by the cigarette
16 companies, comprise more than 2,000 papers published
17 in the world's professional literature.

18 The Council for Tobacco Research-USA, Inc.,
19 an industry-sponsored agency, has the major
20 responsibility for the evaluation and funding of
21 research proposals. Research support has been
22 implemented mainly through a program of
23 grants-in-aid, supplemented by contracts for
24 research with institutions and laboratories. The
25 Counsel does not operate a research facility.

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1 The position of the tobacco industry is that
2 the questions raised by the smoking and health
3 controversy can be resolved only by sound scientific
4 research.

5 That's it from this exhibit, Your Honor.

6 THE COURT: Okay.

7 MS. ROSENBLATT: We have the two
8 depositions to---

9 THE COURT: All right.

10 MS. ROSENBLATT: Dawson. I forgot my
11 glasses.

12 Page 4.

13 THE COURT: Which one are you reading?

14 MS. ROSENBLATT: Brennan Dawson.

15 MR. ROSENBLATT: This is the deposition
16 of a lady named Brennan Dawson, which was taken in
17 Washington, D.C., November 18, 1993.

18 MS. ROSENBLATT: She's with the Tobacco
19 Institute.

20 (Portions of the deposition of BRENNAN
21 DAWSON were read to the jury as follows:)

22 Q. Tell me your name, please, and your address.

23 A. My name is Brennan Dawson. I live at

24 [DELETED]

25 Q. How far is [DELETED] from [DELETED]?

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1 A. It's just over the line.

2 Q. How far is it?

3 A. Probably eight or nine miles.

4 Q. Who are you employed by?

5 A. The Tobacco Institute.

6 Q. What is the Tobacco Institute?

7 A. The Tobacco Institute is a trade association
8 representing the United States cigarette
9 manufacturers.

10 Q. What does it do?

11 A. Like any other trade association in
12 Washington, we, I guess in a word, communicate on
13 behalf of our member companies. That would include
14 with elected officials at the federal and state
15 level, as well as with the public and the media.

16 Q. Who are the member companies of the Tobacco
17 Institute?

18 A. The member companies are Philip Morris, R.J.
19 Reynolds, Lorillard, American Tobacco, and Liggett
20 Myers.

21 Q. That's it?

22 A. That is it.

23 Q. Who is the president of the Tobacco
24 Institute?

25 A. Samuel Chilcote.

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1 Q. Where is the main office of the Tobacco
2 Institute?

3 A. We are located at 1875 "I" Street,
4 Northwest, Washington.

5 Q. Is that where you are based?

6 A. Yes, it is.

7 Q. How many people are based there from the
8 Tobacco Institute?

9 A. Approximately 30.

10 Q. Does the Tobacco Institute have any offices
11 other than this office you have mentioned in D.C.?

12 A. Yes, we do.

13 Q. And where are they?

14 A. We have regional offices, which after the
15 reorganization, I'm not sure of the locations.

16 Q. What is the reorganization you are referring
17 to?

18 A. Several weeks ago we went through a
19 downsizing and a reorganization.

20 Q. Okay. Before the downsizing, tell me where
21 the regional offices were located.

22 A. We had offices in Albany, New York; in
23 Sacramento, California; in Minneapolis; in Austin,
24 Texas, and in---

25 Q. Take your time.

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1 A. Trying to remember whether it was Nashville
2 or Knoxville, something like that.

3 Q. That's it?

4 A. That I can recall.

5 Q. Did some of those offices---

6 MS. ROSENBLATT: It's Page 8 now,
7 Stanley. Line 11.

8 Q. What is your present position with the
9 Tobacco Institute?

10 A. I'm vice-president for public affairs.

11 Q. On a day-to-day basis, what does that
12 involve?

13 A. Most of what it involves is again
14 representing the industry with the media and just
15 public information inquiries we might get, those
16 sorts of things.

17 Q. Do the members of the tobacco industry refer
18 all media inquiries to the Tobacco Institute?

19 A. No, they don't.

20 Q. How does that work? How does it decide
21 which ones they will handle themselves?

22 A. It would be on a case-by-case basis. But if
23 one of our member companies got a call on an
24 industry-wide issue, that they thought we could
25 better handle, they would refer it to us. But there

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1 is no set mechanism for that.

2 Q. For example, when the EPA report came out on
3 the issue of passive smoke, which was obviously very

4 negative toward the tobacco industry, in that
5 specific instance, did the member companies respond
6 themselves if the media called or did they direct
7 everything to the Tobacco Institute?

8 A. I think it was some of each. Some of the
9 companies had statements and responses and some
10 questions they would have referred to us.

11 Q. Let's talk specifically about the EPA
12 report. Who was the person from The Tobacco
13 Institute that fielded those inquiries from the
14 media?

15 A. It would have been anyone in media
16 relations, which is my staff. There wasn't one
17 person to do it.

18 Q. Did you do some of that personally?

19 A. Yes, I did.

20 Q. And who were the other members of your
21 staff?

22 A. Walker Merryman and Tom Lauria.

23 Q. Did they have titles?

24 A. Yes, they do.

25 Q. What is Merryman's title?

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1 A. He is vice-president also.

2 Q. But is he under you or equal to you in terms
3 of the chain of command?

4 A. He reports to me.

5 Q. What about Lauria?

6 A. He is assistant to the president.

7 Q. Does he report to you?

8 A. Yes, he does.

9 MS. ROSENBLATT: Page 11, Line 14.

10 Q. So who were the other vice-presidents that
11 were more or less co-equal with you?

12 A. I'm not sure if they are co-equal. There is
13 a gentleman by name of William Adams, who was senior
14 vice-president for administration; a gentleman by
15 the name of Curt Mulgreen, who heads up the state
16 activities division. And we have the federal
17 regulations division.

18 But, again, because of the reorganization, I
19 don't know who is in charge of that.

20 Q. How long have you personally been with the
21 Tobacco Institute?

22 A. About seven and a half years.

23 MS. ROSENBLATT: Line 9.

24 Q. What formal schooling did you have after
25 that, after high school?

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1 A. I attended the University of Maryland for
2 two years, then left and went to work. Attended
3 college in the evenings at Marymount.

4 Q. Did you get a degree?

5 A. No. I'm still a handful of credits short of
6 that.

7 MS. ROSENBLATT: Now we go to Page 15,
8 Line 4.

9 Q. So you began with the Tobacco Institute in
10 what year?

11 A. This would have been 1986.
12 Q. Has your job changed from the time you went
13 up until the present time, or has it always been
14 pretty much the same?

15 A. It has changed in terms of supervisory
16 responsibilities.

17 Q. Your supervisory responsibilities have
18 increased?

19 A. I did not have supervisory responsibilities
20 when I first joined.

21 Q. What was your job when you first joined?

22 A. I was assistant to the president.

23 Q. Who was president then?

24 A. Sam Chilcote.

25 Q. Is your present job a promotion from
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10898

1 assistant to the president?

2 A. Yes.

3 Q. What does the assistant to the president do?

4 A. A spokesperson.

5 Q. For the Tobacco Institute?

6 A. Yes.

7 Q. Have you personally appeared on many of the
8 national television shows, or any of them?

9 A. I have appeared on national television, yes.

10 Q. Which programs?

11 A. I have appeared on the NBC Evening News, on
12 the CBS Evening News, the Today Show, Good Morning
13 America. Those kinds of programs.

14 Q. Have you ever been interviewed by anyone
15 from the New York Times?

16 A. Yes, I have.

17 Q. In what context?

18 A. I don't recall the specific context.

19 Q. A lot of times?

20 A. Yes. They covered tobacco issues.

21 MS. ROSENBLATT: Now, Page 23, Line 19.

22 Q. What is the Tobacco Institute line when you
23 are asked does cigarette smoking cause cancer?

24 A. If I'm asked if cigarette smoking causes
25 cancer, I would say that I don't know the answer to

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1 that question.

2 Q. Well, not knowing the answer to that
3 question, how can you do what you do, which is
4 represent an industry that makes a product which may
5 cause cancer?

6 A. I would provide the industry's point of view
7 on that. And the industry's point of view is that
8 we don't know if smoking causes cancer.

9 MS. ROSENBLATT: 29, Line 12.

10 Q. Is it your understanding a percentage of
11 those people who quit smoking cold turkey do it
12 successfully and that within six months or a year
13 they are not back to smoking?

14 A. There are various numbers on that. I don't
15 recall anything specific.

16 Q. Give me a general recollection. Do you
17 think a third become smokers again? 50 percent? 2

18 percent?

19 A. I'm not comfortable giving you an answer
20 since I don't recall.

21 Q. Obviously you would concede that if there is
22 a recidivism rate of 80 or 90 percent, then the
23 original statistic is meaningless.

24 A. I'm not sure that recidivism rate would be
25 substantially different from that of diet or

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10900

1 exercise.

2 Q. So you can see that the statistics that you
3 say come from the Surgeon General's office of the
4 people quitting smoking, for all you know, the great
5 majority of them go back to smoking?

6 A. No. I don't know.

7 Q. You don't know one way or the other?

8 A. No. It would be something I would have to
9 look into.

10 Q. Has anyone from the media ever asked you if
11 smoking is addictive? Have you ever had to answer
12 that question to the media?

13 A. Yes, I have.

14 Q. What is your answer?

15 A. That smoking is not addictive.

16 Q. What do you base that on?

17 A. Again, the fact that there is nothing
18 intoxicating about smoking that would cloud your
19 judgment or impairment, your ability to make a good
20 decision about quitting.

21 Most people who quit do so without
22 professional assistance, as opposed to when people
23 are addicted to other things and have to be
24 hospitalized in many cases. It's more of a common
25 sense approach to the issue.

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1 MS. ROSENBLATT: Page 33, Line 16.

2 Q. What is the history of the Tobacco
3 Institute? Are you familiar with it, when it was
4 first formed, why it was formed, that kind of thing?

5 A. The general outlines, yes. It was formed in
6 1958. As I understand it, the industry was looking
7 to put together a trade group that could act on
8 behalf of the entire industry. That has pretty much
9 been the function ever since.

10 Q. Did it always have the same name?

11 A. I think so.

12 Q. Does The Tobacco Institute itself, employees
13 of the Tobacco Institute, testify before committees
14 of the U.S. Congress?

15 A. Yes. Employees have.

16 Q. In what context, usually?

17 A. Generally, if there is a tobacco-related
18 bill, the Tobacco Institute may be invited to
19 present the industry's views.

20 Q. Why do you think the Tobacco Institute is
21 doing so poorly in the last few years in the sense
22 that there are so many bans? For example, on
23 buildings.

24 A. I think public opinion is very much against

25 smoking.

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10902

1 MS. ROSENBLATT: Now go to Page 35.

2 Line 11.

3 Q. You just have no idea why the public, the
4 American public, has, over the last several years,
5 become antismoking?

6 A. I think there are a lot of different
7 reasons.

8 Q. Tell me some.

9 A. I think, for example, the health issue is
10 part of it. I'm not sure it is all of it. I think
11 several years ago the cover of Time Magazine was
12 about national nannies. We kind of like to tell
13 each other what to do in the United States. I think
14 that plays a role in it. Those sort of things. I
15 think they are societal issues and smoking is one of
16 them. That is why I said I have to speculate.

17 MS. ROSENBLATT: Line 18.

18 Q. Why do you think smoking is banned in so
19 many buildings, so many restaurants?

20 A. Because nonsmokers are a majority.

21 Q. Don't you think it is because nonsmokers
22 have been persuaded by breathing in the smoke of
23 other people they can get a disease and become ill?

24 A. No, I don't think so.

25 MS. ROSENBLATT: Okay. Now we go to
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10903

1 38, Line 24.

2 Q. How do you have contact? How does the
3 Tobacco Institute enter relate to its member
4 companies? Do you have periodic meetings?

5 A. Yes, we do. We have periodic meetings and
6 staff to staff informal conversations.

7 Q. How often do the periodic meetings take
8 place?

9 A. It would depend on which meetings they were.

10 Q. Tell me all the different kinds of meetings.

11 A. We have an executive committee made up of
12 the member companies. They would meet four or five
13 times a year. We have a management committee. They
14 would meet more like eight or nine times a year. We
15 have a state activities committee. Again, it would
16 be probably eight or nine times a year. I think
17 there is a budget committee. That is not something
18 I'm involved with so I don't know.

19 Q. Who attends the executive commit meetings.
20 Do the presidents of the member companies attends
21 those meetings?

22 A. Generally, yes.

23 Q. Where are those meetings generally held?

24 A. Either in New York or Washington.

25 Q. If they are held in Washington, are they
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1 held at the offices of the Tobacco Institute or a
2 hotel?

3 A. They are generally held at the Tobacco

4 Institute.

5 Q. Are they one day meetings or are they
6 several day meetings?

7 A. More like half a day.

8 Q. What is generally discussed at those
9 meetings?

10 A. At the executive committee meetings I have
11 attended, and I'm not a member of the executive
12 committee, so I don't attend all of them. The
13 format be work staff reports on various issues that
14 are of importance. And basically discussion of what
15 the institute's activities are.

16 Q. Do you think it is fair to say that the
17 position of the tobacco industry is, we sell a legal
18 product, the information is out there, if people
19 smoke and they get cancer, that's just a risk they
20 are taking?

21 A. I've never heard it formulated.

22 MS. ROSENBLATT: Line 23.

23 Q. Be that as it may. How would you formulate
24 it? If what I said is unfair or inaccurate, tell me
25 how it is unfair or inaccurate.

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10905

1 A. That people do have information about
2 smoking and they should be allowed to make their own
3 decisions about it as adults. We can decide whether
4 or not it is something we care to do.

5 MS. ROSENBLATT: Page 42, Line 8.

6 Q. You will not concede that cigarette smoking
7 has ever caused cancer in a single individual
8 anywhere on the globe?

9 A. Again, I don't think there is an answer to
10 that question because causation has not been
11 established.

12 MS. ROSENBLATT: Now it's Page 49, Line
13 18.

14 Q. Are you on the management committee?

15 A. No, I am not a member of the management
16 committee.

17 Q. Who is?

18 A. Mr. Chilcote for the Tobacco Institute.

19 Q. And of course, he is on the executive
20 committee as well?

21 A. He is the Tobacco Institute person, yes.

22 Q. And the other members are the presidents or
23 CEOs of the member companies?

24 A. Both the executive and the management
25 committee.

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10906

1 MR. ROSENBLATT: No. That's the
2 question.

3 MS. ROSENBLATT: I'm sorry.

4 Q. Both the executive and management committee?

5 A. Not the management committee. That would be
6 the vice president.

7 Q. Vice president of the member companies like
8 Philip Morris, RJR Nabisco?

9 A. Yes.

10 Q. Who is on the state activities committee?

11 A. That I don't know.
12 Q. Is anyone from the Tobacco Institute?
13 A. I believe Mr. Chilcote.
14 Q. Are you on any committee that meets either
15 with the president or vice president of the member
16 companies?
17 A. No. Mr. Chilcote is.
18 Q. He does all of that?
19 A. Yes. He is the designated member.
20 Q. Does Mr. Chilcote ever deal directly with
21 the media?
22 A. No, not to my knowledge, no.
23 MS. ROSENBLATT: Okay. I think we go
24 to Page 59, Line 11.
25 Q. So what was the PR situation, let's say, in
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1 1992, public relations situation at the Tobacco
2 Institute? Did you have a public relations person?
3 A department?
4 A. We had a public affairs division, yes.
5 Q. And what did the public affairs division do?
6 A. Media relations and also issue management
7 which would be individuals who were responsible for
8 keeping track on what was happening on specific
9 issue. For example, taxes. There would be a tax
10 issue manager. They would know what hearings were
11 going on, when, and so on.
12 Q. For example, when you say media relations,
13 does the Tobacco Institute periodically send out
14 materials to the media?
15 A. Periodically, yes.
16 Q. And what kinds of materials would they be?
17 A. A press release on congressional testimony,
18 for example.
19 Q. Have you testified before committees of
20 Congress?
21 A. I personally have not, no.
22 Q. Who usually does that on behalf of the
23 Tobacco Institute?
24 A. It would depend on the situation.
25 Generally, it is Mr. Charlie Whitley, who is a
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1 former congressman from North Carolina who now works
2 with the Tobacco Institute on a consulting
3 arrangement.
4 Q. Is Mr. Whitley a lobbyist?
5 A. I don't know whether he is a registered
6 lobbyist or not. I believe he may be.
7 Q. Well, is he a lobbyist for the tobacco
8 industry?
9 A. I don't know if he is a registered lobbyist
10 or not.
11 Q. Does Mr. Whitley have an office at the
12 Tobacco Institute?
13 A. Yes.
14 Q. Since when?
15 A. The past two years probably approximately.
16 Q. Did Mr. Whitley get defeated in an election
17 or did he quit Congress?

18 A. He chose to retire from Congress.
19 MS. ROSENBLATT: Line 9.
20 Q. As a practical matter, does he spend most of
21 his time at his office at the Tobacco Institute?
22 A. Yes.
23 Q. Does he have any clients other than tobacco
24 interests, to your knowledge?
25 A. I believe he works part-time and solely for
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1 the Tobacco Institute.
2 MS. ROSENBLATT: Page 66, Line 23.
3 Q. What is the warning say about pregnancy?
4 A. Smoking may complicate pregnancy. You want
5 the whole warning?
6 Q. Yes. It's a sentence. It's a one-sentence
7 warning.
8 A. "Smoking may complicate pregnancy and result
9 in premature birth."

10 Q. Fetal injury and low birth weight, right?
11 A. To the best of my recollection, yes.

12 Q. Do you believe that?
13 A. That it may, yes.

14 MS. ROSENBLATT: 69, Line 15.
15 Q. When something happens at the Tobacco
16 Institute which causes you to want to contact
17 someone with scientific knowledge on the issue of
18 smoking and health, is there a particular person
19 within the Tobacco Institute you can go to?

20 A. Well, on the smoking and health issue, in
21 almost eight years I have been there it very rarely
22 comes up. No, there is not someone I can go to.
23 There is no one person assigned to that.

24 Q. Why does it rarely come up? Is that because
25 the Tobacco Institute chooses not to address those
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1 issues? I would think--I mean, I know the media
2 would be interested, so why does it rarely come up?
3 A. In fact, the media very rarely asks the
4 question. So, no, it doesn't come up very often. I
5 know the position of the industry. I would respond
6 to the question and that's the extent of it.

7 Q. Well, how would you answer this question?
8 We were talking about the warning before and we both
9 know that the tobacco industry is required by law to
10 rotate on the packages of its cigarettes and rotate
11 in its advertising four different warnings; is that
12 correct?
13 A. Yes.

14 Q. One of the warnings says, "Cigarette smoking
15 causes lung cancer, heart disease, emphysema, and
16 may complicate pregnancy." Is that a true
17 statement?
18 A. If someone asks that question, how would I
19 respond to that? Is that your question?

20 Q. I'm simply asking that question and asking
21 you to respond.

22 A. The industry's position is that smoking has
23 not been established to cause lung cancer, heart
24 disease and emphysema.

25 Q. So it is the industry's position that that
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1 very definitive statement on the package of your
2 cigarettes is not accurate?

3 A. We differ with that warning, yes.

4 Q. And the only reason you put that warning on
5 is because it is required by law because it is the
6 industry's position that it is not accurate?

7 A. That's right.

8 MS. ROSENBLATT: Now the next question,
9 you leave out the number on Line 17.

10 Q. What would it take to prove to the Tobacco
11 Institute or the industry that cigarette smoking
12 does cause cancer? You say it hasn't been proven.
13 I say, okay, what do I have to do to prove it to
14 you? What do I have to do or what does the
15 scientific community or the medical community have
16 to do to satisfy you, the Tobacco Institute and the
17 tobacco industry, that cigarette smoking causes
18 cancer?

19 A. We could start at the beginning. The
20 studies cited don't conclude that smoking causes
21 cancer. Some of those studies show that smoking may
22 increase your risk for lung cancer, for example.

23 A biological mechanism, a causative agent,
24 has not been established, and thus the industry's
25 position is formed.

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1 In specific answer to your question, I don't
2 know what would satisfy the industry. I would
3 venture that it would be finding a causative agent,
4 but short of that, I don't know.

5 MS. ROSENBLATT: Line 17.

6 Q. So back to my original question. How could
7 anyone, any scientist, any study, any medical
8 school, ever prove to the tobacco industry that
9 cigarette smoking causes cancer, heart disease and
10 emphysema?

11 A. Again, I don't know. I would think the
12 finding of a causative factor would be in that
13 equation somewhere.

14 Q. Namely, a causative factor that causes
15 cancer? Do you, as you sit here today, recognize
16 any factor in the American environment that causes
17 cancer?

18 A. It is my understanding that there are some
19 chemicals that have been determined to cause cancer,
20 yes.

21 Q. Which ones?

22 A. I can't give you a list of them.

23 Q. Can you give me one?

24 A. If I thought about it for--it is not
25 something I have at the tip of my tongue.

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1 Q. Have you studied the chemical makeup of
2 tobacco cigarettes?

3 A. No. I have not studied that.

4 MS. ROSENBLATT: Page 74, Line 24, but
5 25 is out.

6 Q. Okay. You would agree, would you not, there
7 are physicians and medical people and scientific
8 people in America who are convinced cigarette
9 smoking causes cancer and heart disease and other
10 diseases?

11 A. I don't know how many, but, yes, I
12 understand that to be so.

13 Q. Can you site me to a single medical doctor
14 unconnected with the Tobacco Institute or tobacco
15 industry, zero connection to the tobacco industry,
16 who has ever taken the position that cigarette
17 smoking is fine, you can smoke three packs a day all
18 your life, you're not going to get cancer from that,
19 you may get cancer from something else? Has anyone
20 ever taken that position to your knowledge?

21 A. Not to my knowledge.

22 MS. ROSENBLATT: Page 77, Line 1.

23 Q. What is the function of your trade
24 association?

25 A. To represent the industry on industry-wide
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1 matters, and that is what other trade associations
2 in Washington do, too. Selling product is generally
3 done by companies who have products to sell.

4 MS. ROSENBLATT: And then Page 80, Line
5 4.

6 Q. My question is, does the Tobacco Institute
7 have anything to do with tobacco advertising?

8 A. We have nothing to do with the company's
9 decisions on marketing and advertising. We do speak
10 on tobacco advertising issues. If someone were, for
11 example, to ask a question like you just did about
12 billboards, we would respond.

13 That billboard, a company's decision about
14 which brand to advertise on a billboard on a freeway
15 is something we have nothing to do with.

16 MS. ROSENBLATT: Now Line 19, starting
17 with "You."

18 Q. You have spoken out publicly on that,
19 haven't you? You have been quoted in the
20 newspapers?

21 A. In general terms, yes.

22 Q. What do you say--go ahead.

23 A. I'm sorry. Because we represent the whole
24 industry and not specific companies, you get into an
25 area where it would be inappropriate for me or

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1 anyone else in the Tobacco Institute to comment on a
2 specific brand advertisement. That is why I say
3 yes, we have commented generally about tobacco
4 advertising.

5 MS. ROSENBLATT: Line 19.

6 Q. When do you think most people start smoking?
7 Do they take it up at 35? Do you think they take it
8 up when they are teenagers?

9 A. The majority take it up as teenagers.

10 MS. ROSENBLATT: Now Page 83, Line 5.

11 Q. In terms of the various meetings that the
12 Tobacco Institute has, are there meetings attended
13 by anyone from the Council for Tobacco Research?

14 A. Not that I'm aware of, no. I have never
15 seen anyone from that organization.

16 Q. Do you have dealings with the Council for
17 Tobacco Research?

18 A. I never have.

19 Q. Never?

20 A. Never.

21 Q. Do you know what they do?

22 A. I have a general idea.

23 Q. What is the general idea?

24 A. That they sponsor research activities.

25 Q. Have you ever seen the end result of any of

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1 their research activities in the form of a report or
2 anything like that?

3 A. I have not.

4 Q. Do you know what they are researching, what
5 areas, what issues?

6 A. Tobacco. No, I don't. Other than their
7 name implies, there are tobacco issues involved.

8 Q. Do you know anyone over there?

9 A. No, I don't.

10 MS. ROSENBLATT: Line 9.

11 Q. What are the instructions as to how a
12 question would be answered along the line of, does
13 cigarette smoking cause cancer?

14 A. It would be answered to a member of the
15 general public the same way I have answered it to
16 you.

17 MS. ROSENBLATT: Now page 88, Line 3.

18 Q. When there is a ban being discussed in a
19 city or a state, let's say banning smoking in all
20 restaurants, how does the Tobacco Institute get
21 involved in such an issue?

22 A. Generally, we would become aware of it,
23 whether it was by a media call coming into us or by
24 a lobbyist or legislative representative hearing
25 about it, and from there it really depends on what

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1 the situation is. We do not have hard and fast
2 guidelines on what we would do.

3 MS. ROSENBLATT: 89, Line 4.

4 Q. Let's get a little specific then on the
5 smoking ban. To my understanding, it wasn't too
6 long ago smoking was banned in all restaurants in
7 Los Angeles. Big issue in Los Angeles, right?

8 A. Yes.

9 Q. And my understanding, correct me if I'm
10 wrong, is that it passed and today smoking is banned
11 if not in all restaurants, 98 percent of them in Los
12 Angeles?

13 A. I don't know what happened over the summer.

14 Q. So the Tobacco Institute hears that, hey,
15 there is a move afoot to ban smoking in all
16 restaurants in Los Angeles.

17 What does the Tobacco Institute gear up to

18 do in that kind of scenario, if anything?
19 A. We would consider speaking to members of the
20 industry council to present the industry's views.
21 If there was a hearing, someone may or may not
22 testify. I don't believe we testified in Los
23 Angeles. We would see that the business
24 community--excuse me--we would see what the business
25 community thinks about it, those types of things.

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1 Q. Would it be accurate to say that the Tobacco
2 Institute, not necessarily in practical terms, but
3 certainly in philosophical terms, is against all
4 smoking bans in public buildings or in restaurants?
5 Let me limit it to that.

6 A. Yes. We are against bans in public
7 buildings and restaurants.

8 Q. All public buildings and all restaurants?

9 A. There may be an exception. I cannot think
10 of one, so, yes.

11 Q. I guess there would be an exception if there
12 was a restaurant that only caters to children.
13 Would you probably be in favor of a ban if there was
14 such a restaurant?

15 A. I don't know of such a restaurant.

16 Q. What is the Tobacco Institute's position on
17 separate sections in a restaurants? Let's say a
18 smoking section and a nonsmoking section.

19 A. That's okay with us.

20 MS. ROSENBLATT: Now Page 92, Line 19.

21 Q. Isn't one of the reasons that the tobacco
22 industry takes the position that it hasn't been
23 proven is so that people will continue to smoke or
24 at least hear something on the other side of the
25 ledger?

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1 A. No. The reason we take that position and
2 that I would state it in response to a question is
3 because that is what the industry believes to be so.

4 MS. ROSENBLATT: Now it's Page 100,
5 Line 7.

6 Q. Do you ever have occasion to go to tobacco
7 country where the cigarettes are actually
8 manufactured, North Carolina, Virginia?

9 A. I have been to North Carolina and Virginia,
10 yes.

11 Q. What would occasion you to go there? First
12 of all, how often?

13 A. A couple of times a year to North Carolina
14 either to meet with tobacco growers to let them know
15 what is going on in terms of tobacco issues or there
16 may be a meeting at RJR, R.J. Reynolds Tobacco
17 Company in Winston-Salem.

18 MS. ROSENBLATT: 101/8.

19 Q. So excluding the time you were on maternity
20 leave, let's say in the two years before that, how
21 often did you have occasion to go to a meeting of
22 one kind or another in North Carolina?

23 A. Three or four times maybe.

24 Q. Three or four times a year?

25 A. Yes.

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1 Q. How long would you usually stay?

2 A. Be in and out the same day, depending on
3 flight schedules. A meeting would last a couple of
4 hours.

5 Q. Where does the money come from to pay the
6 salary from the Tobacco Institute people, from the
7 member companies?

8 A. Yes.

9 Q. Do each of the member companies pay an equal
10 amount or do the larger companies pay more?

11 A. My understanding is they are assessed
12 roughly on brand share.

13 MS. ROSENBLATT: Page 103, Line 17.

14 Q. In terms of the kind of entity that the
15 Tobacco Institute is, is it a corporation?

16 A. I believe it is a not-for-profit
17 organization, but, again, I think that is a matter
18 of legal terms. I don't know.

19 Q. A not-for-profit?

20 A. A tax term.

21 Q. Is it organized under the laws of DC?

22 A. I don't know.

23 Q. Does the Tobacco Institute have an in-house
24 lawyer?

25 A. We do not.

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1 Q. Who is your law firm, this firm?

2 A. Covington and Burling represents us.

3 Q. Since you have been with the Tobacco
4 Institute, has this law firm always represented the
5 Tobacco Institute?

6 A. Yes.

7 Q. Since you have been with the Tobacco
8 Institute, have they ever had any kind of
9 publication?

10 A. When I first joined, there was something
11 called the Tobacco Observer. It was cancelled
12 relatively soon after I joined, so I don't know who
13 it wasn't to or what it was.

14 MS. ROSENBLATT: 106.

15 Q. Is any research of any kind done under the
16 auspices and direction of the Tobacco Institute?

17 A. Not generally, no. We don't sponsor
18 research. We have commission surveys and the like,
19 but we don't conduct scientific research.

20 MS. ROSENBLATT: 110, Line 21.

21 Q. Do you know Dr. James Glenn?

22 A. I do not.

23 Q. The name doesn't mean anything to you?

24 A. I don't recall ever hearing it before.

25 Q. What does it say on the tobacco---

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1 MS. ROSENBLATT: I think it's Line 14,
2 next page.

3 Q. Does the Tobacco Institute conduct any

4 activities outside of the United States?
5 A. No, we do not.
6 Q. So it is a hundred percent within the United
7 States, what you do?
8 A. Yes. In fact, we only represent the
9 domestic companies: Philip Morris-U.S.A., R.J.
10 Reynolds Tobacco. Not R.J. Reynolds Tobacco
11 International, things like that.

12 MS. ROSENBLATT: Page 113, Line 25.

13 Q. And how exactly mechanically does the
14 Tobacco Institute get involved at the state
15 legislative level? Do you send representatives
16 there physically?

17 A. No. Sometimes, yes, we may send
18 representatives there physically. In most
19 states--and again, because of the reorganization, I
20 don't know what the status is exactly--they would
21 have a contract lobbyist, and it would be that
22 person's responsibility to monitor legislation.

23 Q. Are there particular lobbying firms that the
24 Tobacco Institute uses?

25 A. We would have a contract lobbyist, yes, so
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1 that would be a firm or a person, depending on the
2 situation, we would use.

3 Q. What are some of the firms you use most
4 frequently, contract lobbyists?

5 A. I don't know who they are in each of the 50
6 states. No names come to mind.

7 Q. Do you have contract lobbyists at the
8 federal level?

9 A. I don't know.

10 Q. Who would know that, the president?

11 A. Mr. Chilcote, certainly.

12 Q. Does lower tar in a cigarette mean the
13 cigarette is less likely to cause health problems?

14 A. I don't believe.

15 Q. Is it your understanding the percentage of
16 tar has anything whatsoever to do with health?

17 A. The industry, I'm not aware of an industry
18 position on that.

19 Q. But what is your understanding of tar
20 itself? What is tar? You see it constantly in the
21 ads. Tar.

22 A. Right.

23 Q. What is it?

24 A. It is something that is measured by the FDC
25 method and included in the advertisements. My

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1 understanding is it is a condensate of the smoke. I
2 may be wrong. This is not something I have looked
3 into.

4 MS. ROSENBLATT: Next page.

5 Q. Is it your understanding that low tar
6 cigarettes are less of a risk than high tar
7 cigarettes, less of a health risk?

8 A. Again, the industry does not take that
9 position.

10 Q. Then do you know, for example, why many of

11 the advertisements stress the fact of low tar and
12 nicotine?

13 A. I am aware there is a consumer preference
14 for lower tar and lower nicotine cigarettes. My
15 personal experience, I refer the Marlboro Lights;
16 they taste different, they taste different in a
17 sense you can taste the difference between Coke and
18 RC. That is my understanding of low tar, low
19 nicotine.

20 MS. ROSENBLATT: 117.

21 Q. Let me see the percentages on the pack just
22 out of curiosity. So, it is your understanding that
23 the only reason that cigarette companies stress in
24 their advertising, some cigarette companies stress
25 in some of their advertising, low, lower, lowest tar

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1 and nicotine, is because that has become a consumer
2 preference?

3 A. That is my understanding.

4 Q. And no one has ever convinced you or shown
5 you evidence that lower tar and lower nicotine means
6 anything from a health standpoint?

7 A. No one has ever made such a statement, no,
8 or shown me a document. No. I don't believe that
9 is the industry's contention.

10 Q. Well, what is the industry's contention on
11 tar and nicotine?

12 A. That there are brand differentiations that
13 some consumers prefer one to the other. But that
14 there is not--just leave it there. That is my
15 understanding of it.

16 Q. Do you believe that there is a consumer
17 conception that low tar and nicotine means it is a
18 safer cigarette from a health standpoint?

19 A. I don't know that, no.

20 Q. And what you're saying to me is that
21 certainly the tobacco industry and certainly the
22 Tobacco Institute has never suggested to the
23 consumer that low tar and nicotine means it is a
24 safer, less dangerous cigarette?

25 A. We have never made such a suggestion.

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1 Q. And they always talked about it in the ads
2 MG, period, tar like 11 milligrams, period, or four
3 milligrams, period. What does MG mean?

4 A. I don't know.

5 Q. Having worked in government, do you even
6 know why the government is interested in that or why
7 is that put in all the ads?

8 A. No.

9 MS. ROSENBLATT: We are on Page 127,
10 Line 4.

11 Q. You were working for the Tobacco Institute
12 when the ban on smoking on domestic airlines went
13 into effect?

14 A. Yes, I was.

15 Q. What exactly did the Tobacco Institute do?
16 What did you do in connection with trying to prevent
17 that ban from going into effect?

18 A. The Tobacco Institute specifically made its
19 views known that we were in opposition to the
20 smoking ban. Again, we would have done that with
21 legislators. We did that with the media.

22 Q. Who from the Tobacco Institute testified
23 before any congressional committee dealing with that
24 subject, either House or Senate?

25 A. I don't recall who would have testified, if
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1 we testified at all.

2 Q. You're not sure?

3 A. No, I am not.

4 Q. But you did not testify on that issue?

5 A. No, I did not.

6 Q. Other than being against it, did the Tobacco
7 Institute put out a position paper on that, a
8 brochure, to send to the media as to why you opposed
9 the ban?

10 A. We had a press release, if not two perhaps,
11 on the issues because there were congressional
12 hearings. So we would have had a press release, but
13 we did not have a brochure that I can recall.

14 Q. For how long a period of time was that an
15 issue, and by that I mean, where it became obvious
16 to you there was a concerted push for that ban on
17 the domestic airlines until it actually became law?

18 A. Well, there was legislation introduced, and
19 then there was the two-hour ban that was supposed to
20 run two years, but, in fact, it was never allowed to
21 sunset before the total ban or almost total ban of
22 six hours went into effect. So it would have been
23 over a period of probably close to two years it was
24 an issue that raised and diminished in its
25 visibility.

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1 Q. Did any of the tobacco companies on an
2 individual basis deal with that issue or was that
3 pretty much left to the Tobacco Institute to handle?

4 A. I don't know what the member company's
5 individual activities might have been.

6 Q. Who was the lobbyist for the Tobacco
7 Institute on that issue, the smoking ban on
8 airlines?

9 A. We don't have lobbyists for specific issues.

10 Q. As a practical matter, was any lobbyist
11 handling that issue on behalf of the tobacco
12 industry?

13 A. No one singly that I recall.

14 Q. No firm comes to mind?

15 A. No.

16 Q. And what was your understanding of the
17 reason why that was enacted into law from the
18 standpoint of the proponents? Why was it necessary?
19 What were they saying?

20 A. They were saying that they thought the
21 separate sections were not working, that the
22 nonsmokers in the front of the plane in this case
23 were being subjected to environmental tobacco smoke.

24 Q. Did you personally or the Tobacco Institute

25 get involved in issues such as how to make the
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1 ventilation system better, how in some way to
2 maintain the status quo where you would have a
3 smoking and nonsmoking section and yet not subject
4 nonsmokers to the passive smoke?

5 A. I don't recall us being involved in that.
6 I'm trying to recall so I can give you an accurate
7 answer. No, to my knowledge, I was not involved in
8 it.

9 Q. What was the Great American Welcome?

10 A. That was a program, and I don't remember the
11 year, whereby we invited restaurants and hospitality
12 organizations to join us in extending a welcome to
13 both smokers and nonsmokers. They were again using
14 a restaurant as an example. Organizations that
15 accommodated both smokers and nonsmokers.

16 MS. ROSENBLATT: I think the next one
17 is 123, Line 25.

18 Q. According to the New York Times, the Tobacco
19 Institute took out full-page ads in 17 of the
20 country's largest newspapers. Does that sound about
21 right; you think that's accurate?

22 A. My recollection was about ten.

23 Q. Whose idea was the Great American Welcome?

24 A. There was no single person that was
25 involved. I was involved in its development. But,

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1 again, there is no one person I can point to.

2 MS. ROSENBLATT: Okay. Line 1 on Page
3 139. I guess it's the page before. Sorry. Line
4 16, 138.

5 Q. Tell me about your supervisory
6 responsibilities.

7 A. We have a media relations staff that is
8 currently two other people and a secretary, and so
9 there are personnel problems that have to be
10 handled, those kinds of things, as well as
11 allocating people's time and trying to provide
12 resources to the legislative divisions when they ask
13 us for it.

14 Q. What kinds of resources would you be
15 providing to the legislative divisions?

16 A. Something like who is going to write a press
17 release and what that press release was going to
18 say, or they would like a spokesperson to testify at
19 a state hearing, for example, and how that testimony
20 is going to get written and who is available to
21 travel to that state capital. So managing those
22 sorts of things takes another, I would say, 25
23 percent of my time.

24 Q. How about the other 25 percent?

25 A. Assisting Mr. Chilcote on requests he might
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1 have, discussing things with member companies'
2 staff, again letting them know what is happening and
3 what the media calls we are getting on a given day

4 are about.

5 MS. ROSENBLATT: Page 141, Line 2.

6 Q. And if there is a significant smoking ban
7 piece of legislation such as there was when they
8 were outlawing smoking in all restaurants in Los
9 Angeles, your focus would be on that? That is what
10 I understand you to say when you say it was driven
11 by what is going on.

12 A. That's right.

13 Q. Does the Tobacco Institute provide speakers
14 to groups who want to debate on the smoking issue,
15 smoking and health?

16 A. We consider those requests and have, yes.

17 Q. Have you ever done that? Do you do any of
18 that?

19 A. Yes.

20 MS. ROSENBLATT: Now 147, Line 6.

21 Q. What did you do to prepare for today's
22 deposition, if anything?

23 A. I met with my attorney twice. That's all.

24 Q. When was the first time you met?

25 A. A week ago Tuesday, may have been Wednesday.

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1 Q. Here in these offices?

2 A. No. We met in my office.

3 Q. And with who in particular, which lawyer or
4 lawyers?

5 A. Mr. Duke, Mr. Dym, I believe Mr. Remes was
6 there.

7 Q. How long did you spend on that meeting about
8 a week ago?

9 A. We met twice. Both were under two-hour
10 meetings.

11 Q. The same three lawyers at the second
12 meeting?

13 A. Yes. And Mr. Northrip from Shook, Hardy.

14 MS. ROSENBLATT: Line 8, 148.

15 Q. How can you answer media inquiries relating
16 to the issue of tobacco and health?

17 A. How can I answer?

18 Q. Yes. Since you don't really know anything
19 about that issue other than to say that it hasn't
20 been proven that cigarette smoking causes cancer.

21 A. I think, as we discussed earlier this
22 morning, I have reviewed the congressional testimony
23 going back to the labeling hearings and the like. I
24 have looked at the issues and I'm comfortable with
25 the industry position, so that is how I can respond

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1 to media inquiries, those few I have gotten over
2 eight years.

3 Q. The congressional testimony of who?

4 A. I don't recall who it was. It was volumes
5 of testimony going back to the labeling hearings,
6 for example.

7 MS. ROSENBLATT: Page 151, Line 14.

8 Q. When someone from the media does ask a
9 question to you dealing with the issue of health and
10 smoking, other than saying what you said on this

11 deposition, you don't say anything more than that,
12 do you?

13 A. No. I wouldn't.

14 MS. ROSENBLATT: 153, Line 13.

15 Q. Do you have at the Tobacco Institute a
16 collection of every time you have been quoted?

17 A. No, we don't.

18 Q. That is not kept?

19 A. No, sir, it is not.

20 Q. That is why you can feel comfortable in
21 doing your job without even knowing what the Council
22 for Tobacco Research does?

23 A. The Council for Tobacco Research is not
24 affiliated with the Tobacco Institute. Why would I
25 need to know what they do to do my job?

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1 MS. ROSENBLATT: Now 155, Line 13.

2 Q. That is why you would want to know what the
3 CTR was doing, so you could answer questions
4 intelligently about the issue between smoking and
5 health?

6 A. I don't believe that is an accurate premise,
7 no. I have gotten along very comfortably without
8 knowing about CTR research.

9 MS. ROSENBLATT: Page 158, Line 3.

10 Q. You have zero personal experience with CTR
11 based on your testimony today?

12 A. But I have almost eight years of experience
13 with this industry. My job is not to explain the
14 industry's research. I am not affiliated nor is the
15 organization I work for with CTR.

16 Q. What has this great industry ever done to
17 make a safer cigarette? Do you know anything about
18 the history of that?

19 A. No, I don't.

20 MR. ROSENBLATT: Continue?

21 MS. ROSENBLATT: Yes.

22 Q. While you were on maternity leave during the
23 last year, let's say, are you aware of any new
24 reports that have come out on the issue of smoking
25 and health?

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1 A. Not that I recall. Certainly none that were
2 brought to my attention.

3 Q. What is the mechanism whereby the Tobacco
4 Institute keeps the member companies aware of the
5 kinds of media inquiries you are getting and how you
6 are responding?

7 A. There is no such mechanism.

8 MS. ROSENBLATT: 159.

9 Q. Is there anyone employed in Washington, D.C.
10 by the Tobacco Institute that has any kind of
11 scientific or medical background?

12 A. I don't believe so, no. In terms of Tobacco
13 Institute employees, no.

14 Q. Well, does the Tobacco Institute hire
15 independent contractors in those fields?

16 A. We do from time to time, yes.

17 Q. And for what reason?

18 A. To review literature and give us their
19 opinion; not on the smoking and health issue, but
20 perhaps environmental tobacco smoke.

21 Q. Who have you used as an outside consultant
22 on the issue of environmental tobacco smoke?

23 A. I think I listed some earlier. Dr. Gio
24 Gori, Dr. Whitosh.

25 Q. Other than those?

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1 A. There are a number whose names simply aren't
2 rattling right off.

3 Q. Does the Tobacco Institute make political
4 contributions?

5 A. Yes, we do.

6 Q. And who's in charge of that?

7 A. The federal relations division, actually
8 Mr. Chilcote.

9 Q. Do you know, for example, how much money was
10 given in the most recent presidential election?

11 A. No, I don't.

12 Q. Do you have any information on that subject
13 at all?

14 A. No, I don't.

15 Q. Does the Tobacco Institute file public
16 disclosure forms?

17 A. Of what kind?

18 Q. Such as political contributions?

19 A. We would comply with all the federal and
20 state laws that are necessary. I know there are
21 some. They vary. I don't know what each is.

22 Q. What laws apply to the Tobacco Institute?
23 Have you ever seen a public disclosure form filled
24 out itemizing the amounts that the tobacco industry
25 has given to various political candidates?

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1 A. No. I have never seen a public disclosure
2 form.

3 Q. Who writes the checks for the Tobacco
4 Institute?

5 A. I don't know.

6 MS. ROSENBLATT: I think that is it.
7 We finished. Should we take a break?

8 THE COURT: Yes. Okay. Let's take a
9 break, folks, please.

10 (The jury exited the courtroom and the
11 following proceedings were had:)

12 THE COURT: Okay. Just one quick
13 question here. On Donald Johnston's depo. Who is
14 handling that?

15 THE COURT: I don't have your
16 designations. I think you gave me the designations
17 for Mr. Brookes.

18 MR. SCHNEIDER: Oh, all right.

19 THE COURT: Yes. That's better.

20 MR. SCHNEIDER: Sorry.

21 THE COURT: No problem. Better to know
22 it now than later.

23 (A brief recess was taken.)

24 (The jury entered the courtroom and the

25 following proceedings were had:)

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1 THE COURT: What we are going to do
2 now?

3 MR. ROSENBLATT: It's called more of
4 the same.

5 THE COURT: Another witness by
6 deposition.

7 MR. ROSENBLATT: This is the deposition
8 of Walker Merryman, also with the Tobacco Institute,
9 taken in Washington, D.C., November 18, 1993.

10 (The deposition of WALKER MERRYMAN was read
11 to the jury as follows:)

12 MS. ROSENBLATT: Page 4, Line 22.

13 Q. Tell us your name, please, and your address.

14 A. Walker Merryman. Home address is
15 [DELETED].

16 Q. Who are you employed by?

17 A. The Tobacco Institute.

18 Q. And what is your title?

19 A. Vice president and director of
20 communications.

21 Q. How long have you had your present job with
22 the Tobacco Institute?

23 A. My present position, since I believe 1982.

24 Q. And you have been with the Tobacco Institute
25 starting when?

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1 A. 1976.

2 Q. Continuously from '76 up until today?

3 A. That's correct.

4 Q. Trace for me, if you would, the different
5 titles, the different lines of work that you have
6 done since 1976.

7 A. I was hired in 1976 as assistant to the
8 president of the Tobacco Institute. In
9 approximately 1980, I became director of
10 communications. And then in approximately 1982, I
11 became vice president and director of
12 communications.

13 Q. Who hired you?

14 A. Mr. Horace Kornegay.

15 Q. He was the president?

16 A. He was.

17 MS. ROSENBLATT: Now Page 10, Line 1.
18 I guess it's Page 9.

19 Q. Mr. Kornegay, he was the president of the
20 Tobacco Institute from when to when?

21 A. Well, he was president when I arrived, and
22 as I understand it, he became president in 1971, I
23 believe. He retired from the institute several
24 years ago, five to seven years ago.

25 Q. Who had been all the presidents since you

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1 have been here? After Kornegay came who?

2 A. Sam Chilcote who is the president.

3 Q. Really, you have only been with two people

4 who were president?
5 A. That's right.
6 Q. What is an average day for you? What do you
7 do?
8 A. A great deal of time is spent responding to
9 telephone calls from reporters who have inquiries on
10 a wide variety of subjects.

11 MS. ROSENBLATT: Line 2.
12 MR. ROSENBLATT: Yes.
13 Q. You personally do that, talk to reporters?
14 A. I personally do, yes, sir.

15 Q. In terms of responding to inquiries, how do
16 you answer inquiries which deal with a specific, a
17 new study that might have appeared in the New
18 England Journal of Medicine, the Journal of the
19 American Medical Association, that kind of thing,
20 which is basically antitobacco, and then they say
21 what do you have to say about that article?

22 A. It would be typical for us not to respond
23 immediately because typically we would not have seen
24 the study. We would want to have some guidance from
25 someone who was expert in that area before we

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1 responded.

2 Q. On such questions, who would you get the
3 guidance from? Is there an in-house scientific
4 person at the Tobacco Institute?

5 A. No. There is not.

6 Q. Well, let's say a fairly technical article
7 appears in the New England Journal of Medicine. It
8 is obvious to you as a layman from reading it that
9 it is very antitobacco, but you may not be familiar
10 with all the words or the jargon in the article, so
11 what would be your source to help explain it to you
12 better so you can answer an immediate question
13 better?

14 A. We might ask a consultant to read this
15 report, this study, and tell us what it means. That
16 is, of course, providing we have decided we wish to
17 respond at all.

18 MS. ROSENBLATT: Page 26, Line 2.

19 Q. Let's say this happens in terms of a media
20 inquiry. You get a call from the New York Times and
21 the reporter says, I got a package of cigarettes in
22 front of me and there is a warning on this package
23 which says, Surgeon General's warning. What does
24 the warning say about cancer, do you know?

25 A. There are four different warning notices

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1 that appear on the cigarette packs in the ads. I
2 don't recall the specific wording of each.

3 Q. I think only one of them specifically
4 mentions the word cancer. What does that warning
5 say, to the best of your recollection?

6 A. "Surgeon General's Warning: Cigarette
7 smoking causes cancer, heart disease and emphysema."

8 Q. And the reporter says to you, I got it in
9 front of me. It says that cigarette smoking causes
10 lung cancer and heart disease and emphysema. Is

11 that true?

12 A. I don't know if it is or not. It is
13 certainly true that the warning appears.

14 MS. ROSENBLATT: 27, Line 7.

15 MR. ROSENBLATT: Line 7.

16 MS. ROSENBLATT: Yes.

17 Q. How can they be informed when you are not
18 informed? You don't know if it's true. How does
19 the guy in the street who is on an assembly line at
20 Chevrolet, how is he going to know if you don't
21 know?

22 A. Various public opinion polls over the years
23 have indicated an excess of 90 percent of the
24 American public know and understand what the Surgeon
25 General and others have said about smoking. And I

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1 think, therefore, they are informed about the
2 possible risks.

3 Q. As I understood your testimony, your bottom
4 line answer to the question whether or not cigarette
5 smoking causes cancer would be you don't know
6 whether it does or it doesn't?

7 A. That is correct.

8 Q. What effort have you personally made to find
9 out whether it does or doesn't?

10 A. I have read a great many of the statements
11 made by scientists who have studied questions
12 surrounding smoking and health issues made before
13 congressional committee hearings dating back to the
14 mid 1960s in which a great many questions about
15 smoking and health issues were explored.

16 MS. ROSENBLATT: Line 11.

17 Q. What is your evidence on the other side of
18 the coin?

19 A. As I've said, there are a great many people
20 in science who studied these issues who testified
21 before Congress over the years who have questions
22 about whether or not it has ever been established
23 that smoking causes the diseases that it has been
24 associated with.

25 Q. Can you name any of them?

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1 A. I would have to go back and look. It has
2 been a very long time. This is not an issue that
3 comes up with any great frequency at all.

4 Q. As you sit here today, are you aware of any
5 physician unconnected with the tobacco industry who
6 publicly takes the position that it has not been
7 proven that cigarette smoking causes cancer?

8 A. No, I am not.

9 Q. Have you ever heard of Dr. James Glenn?
10 Does that name ring a bell to you at all?

11 A. I don't believe so.

12 Q. What do you know about the Council for
13 Tobacco Research?

14 A. It is, to the best of my knowledge, an
15 organization which exists to fund scientific
16 research and it receives its funding from the
17 tobacco industry.

18 Q. In the same manner that the Tobacco
19 Institute receives its funding from the tobacco
20 industry?

21 A. I don't really know.

22 Q. Other than that general statement, do you
23 know anything specifically about the Council for
24 Tobacco Research or the members of any scientific
25 Advisory Board of the Council for Tobacco Research,

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1 or what kind of things they research?

2 A. I don't really have any specific knowledge
3 in that area.

4 Q. Well, for example, have you ever seen a
5 published study, formal, informal, or unpublished
6 for that matter, that was reduced to writing in
7 perhaps an informal memo form as to any research
8 conducted by the Council for Tobacco Research?

9 A. I don't think so. Not if I understood your
10 question.

11 Q. Was there anything unclear?

12 A. It is a little convoluted. If you can
13 better rephrase it, I might be able to answer it
14 better.

15 Q. It is an all-encompassing question initially
16 as to whether or not you have ever seen anything
17 coming out of the Council for Tobacco Research,
18 either directly or any study they ever funded, where
19 you saw any kind of document describing what they
20 were researching and what was the result of a given
21 piece of research?

22 A. The only thing I have ever seen is their
23 annual report which lists, as I remember, the
24 research efforts that they are currently funding,
25 and I believe some of the ones they have funded in

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1 the past.

2 MS. ROSENBLATT: 31.

3 Q. The Council for Tobacco Research would send
4 that to the Tobacco Institute or you would have to
5 ask for it?

6 A. Apparently I'm on a list to receive it.

7 Q. And you get it?

8 A. Yes.

9 Q. Annually?

10 A. Yes.

11 Q. How long a report is that about?

12 A. Well, I suppose it's two hundred pages
13 perhaps.

14 Q. And in those two hundred pages, what I'm
15 trying to understand is whether or not contained
16 therein is ever a report indicating the results of a
17 given piece of research?

18 A. I frankly don't recall.

19 Q. Do you have any concept of what the Council
20 for Tobacco Research, what kind of research they
21 conduct on what subjects?

22 A. No. I really don't know what research they
23 conduct. I don't think they conduct research
24 themselves.

25 Q. No, but in terms of the grants they give
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1 out, in what areas are they giving those grants out?

2 A. I don't know.

3 Q. Have you read various Surgeon General's
4 reports over the years?

5 A. I have read some.

6 Q. You would agree, would you not, they are
7 pretty definitive, the Surgeon General reports
8 saying cigarette smoking does in fact cause these
9 diseases, cancer and other diseases?

10 A. Yes.

11 MS. ROSENBLATT: Now we go to 33, Line
12 21.

13 Q. You have worked for the Tobacco Institute
14 since 1976?

15 A. Yes.

16 MS. ROSENBLATT: 36, Line 5.

17 Q. But you have no scientific information which
18 says cigarette smoking does not cause cancer or
19 heart disease, do you?

20 A. I know of none.

21 MS. ROSENBLATT: Line 15.

22 Q. So wouldn't you concede the people who
23 continue to smoke, in spite of being fully informed,
24 are addicted and can't help themselves?

25 A. I would say only they made their own

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1 decision with respect to smoking.

2 MS. ROSENBLATT: Page 38, Line 6.

3 Q. What do you do at the Tobacco Institute
4 other than respond to media inquiries in terms of
5 your day-to-day functions and duties?

6 A. I may be called upon to consist in preparing
7 material to be distributed to the news media if an
8 event is to occur in which we are a participant and
9 we want the news media to know of it. I may respond
10 to calls from the general public for a variety of
11 types of information that we may have available.
12 Also, a certain amount of reading involved every
13 day.

14 Q. Like what? What are you reading?

15 A. The general newspapers, news media, to
16 determine what stories that may involve us may be
17 there so we can be prepared for additional calls if
18 there are any.

19 MS. ROSENBLATT: 39, Line 1.

20 Q. What do you have to do with lobbyists,
21 either at the state, local or federal level?

22 A. Well, I know some of the people involved in
23 dealing with state and federal issues. I frankly
24 don't know which of them are or are not registered
25 lobbyists.

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1 MS. ROSENBLATT: Page 40, Line 22.

2 Q. I mean a press release. For example, when
3 the EPA report came out condemning and talking about

4 the dangers of environmental tobacco smoke, did you
5 simply wait for inquiries or did you in a sense
6 counter-attack?

7 A. In that particular case, we certainly had
8 material available which we did send to reporters
9 who we believed were interested in this issue.

10 Q. Is there anyone in the news media at the
11 national level who has taken the position that the
12 tobacco industry is being unfairly dealt with and
13 that it really hasn't been proven that cigarette
14 smoke is all that dangerous?

15 A. I don't know of anyone.

16 Q. Is that discouraging?

17 A. Well, we provide the information and hope
18 that we at least get a fair hearing.

19 Q. The only information you provide is that it
20 hasn't been proven. You just keep saying that. It
21 is not like when you say you provide the information
22 you send them a study saying, look, here is a
23 scientific study done at a terrific medical school
24 which proves that cigarette smoking is safe. You
25 never send them that kind of information?

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1 A. I know of no such study.

2 Q. Of course not. It doesn't exist, right?

3 A. I know of no such study.

4 MS. ROSENBLATT: Page 46, Line 15.

5 Q. Does the Tobacco Institute make political
6 contributions?

7 A. Yes, I believe we do.

8 Q. Is that done through your department?

9 A. No, it is not.

10 MS. ROSENBLATT: Now Page 49, Line 15.

11 Q. From the time you first came with the
12 Tobacco Institute, did they ever put out any kind of
13 in-house publication? I don't necessarily mean a
14 fancy magazine, but anything that would have gone to
15 all the members?

16 A. Yes, I believe so.

17 Q. And what was the name of it?

18 A. The Tobacco Observer.

19 MS. ROSENBLATT: Now Page 51, Line 7.

20 Q. Is it fair to say that the tobacco industry
21 opposes across the board any smoking ban in any
22 public building or restaurant?

23 A. What we support is accommodating smokers and
24 nonsmokers to the best extent possible.

25 Q. Could you answer my question now?

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1 A. And we would rather not have legislators
2 dictating where and when it is appropriate for
3 people to smoke. We would rather not have
4 legislators telling people who run restaurants that
5 they may or may not allow smoking. We believe the
6 democracy of the marketplace can certainly take care
7 of that.

8 Q. My question was, is it the policy of the
9 Tobacco Institute and the tobacco industry to oppose
10 all bans in all public buildings and restaurants?

11 It may be for the reasons you just expressed, but I
12 didn't ask you about those reasons.

13 A. Well, I can conceive of circumstances under
14 which we would not oppose a ban on smoking.

15 Q. I'm not asking you to conceive of
16 circumstances. I'm asking you as a practical
17 matter, since you have been with the Tobacco
18 Institute, is it not true it has been the policy of
19 the Tobacco Institute to across the board oppose any
20 proposed smoking ban in any public building or
21 restaurant?

22 A. I believe that is true.

23 MS. ROSENBLATT: Page 56, Line 8.

24 MR. ROSENBLATT: I'm sorry. What page?

25 MS. ROSENBLATT: 56.

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1 Q. What is tar?

2 A. What is tar?

3 Q. Tar. Is that a term you are familiar with?

4 A. I am. It is a condensate measured after a
5 machine smoking method, the product of incomplete
6 combustion. It is measured in milligrams.

7 Q. What does that mean, condensate?

8 A. It is the product of the incomplete
9 combustion of the cigarette.

10 Q. Why do so many cigarette advertisements
11 stress low tar? What is the difference between low
12 tar and high tar? Who cares?

13 A. The low tar cigarettes are generally those
14 that are below 15 milligrams yield per cigarette.

15 Q. But what does that mean to the well-informed
16 consumer you keep talking about, this well-informed
17 guy who sees this brand has 14 milligrams tar, this
18 brand has six milligrams tar? What is the
19 difference to this well-informed consumer?

20 A. I don't know what the difference might be.

21 MS. ROSENBLATT: 58, Line 17, starting
22 with "Based."

23 Q. Based on your experience in the tobacco
24 industry, when you see an ad that says low tar,
25 lower, lowest tar, stressing the lowness of the

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1 milligrams of tar, did it ever occur to you the
2 reason for that kind of stress in an advertisement
3 is to make the consumer believe that by getting a
4 low tar, low nicotine cigarette, he is buying a less
5 dangerous cigarette, or did that never occur to you?

6 A. I don't know what it means, Mr. Rosenblatt.

7 Q. How is the well-informed consumer that you
8 keep talking about supposed to know if you, who has
9 worked for the Tobacco Institute, doesn't know?
10 Really. How is this well-informed consumer out
11 there supposed to know what low tar means if you
12 don't know what low tar means?

13 A. I can't answer that question.

14 MS. ROSENBLATT: 64, Line 13.

15 Q. Do you personally ever have occasion to
16 testify before congressional committees?

17 A. I think I have done so once.

18 Q. Who usually does the testifying from the
19 Tobacco Institute?

20 A. I believe Charlie Whitley usually does the
21 testimony.

22 Q. He is the former congressman from North
23 Carolina?

24 A. He is a former congressman from North
25 Carolina.

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1 Q. So he goes up on the hill and testifies
2 quite frequently?

3 A. He has.

4 Q. Is he a full-time employee of the Tobacco
5 Institute, Mr. Whitley?

6 A. I don't believe he is an employee, no.

7 Q. Who is he?

8 A. He is a consultant.

9 Q. His office is right there, isn't it, at the
10 Tobacco Institute?

11 A. He does have an office assigned to him in
12 the Tobacco Institute, yes.

13 MS. ROSENBLATT: Next page.

14 Q. I'm showing you something called the Tobacco
15 Institute Scope and Activities. It's a copy. I ask
16 you if you have ever seen that before?

17 My understanding is it is a copy of a
18 brochure that the Tobacco Institute put out.

19 A. Yes. It appears to be.

20 Q. You have seen that before?

21 A. I believe I have.

22 Q. Did you write this or any part of it?

23 A. No.

24 Q. Would you know who did?

25 A. No, I do not.

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1 Q. Do you know what the purpose of this was? I
2 mean, it looks to me like it would be intended maybe
3 for the general public. I don't know.

4 A. I believe it is, yes.

5 Q. And as a practical matter, how did this get
6 to the general public? Was this only given to
7 people who called and had inquiries, or was this
8 disseminated on some wider basis?

9 A. I don't know of any wide dissemination that
10 was ever given. Personally, I would give it to
11 someone who asked what the mission of the institute
12 is.

13 Q. Is this still in existence? Do you still
14 have this now, this brochure?

15 A. Either that or a version of it.

16 Q. You mention you are involved with issues
17 involving environmental tobacco smoke and its role
18 in indoor air quality.

19 The institute is a communicator of
20 information and viewpoints on these and other
21 matters to the public, the news media and government
22 on local, state and national levels.

23 What do you tell people that call up and ask
24 you about environmental tobacco smoke?

25 A. I would respond to specific questions.

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1 Q. How would you respond to this question?

2 I'm a nonsmoker, I'm working in a place
3 where everyone is smoking and I don't like it, and I
4 think it is bad for my health. Is it?

5 A. I don't know if it is or not, but I think in
6 any indoor environment, there are a wide variety of
7 things which might contribute to the quality of the
8 air, and that environmental, tobacco smoke might be
9 one of them.

10 Q. Obviously, you really have no solution for a
11 person with that kind of inquiry?

12 A. I don't have any specific solution to offer,
13 no, I don't.

14 Q. The brochure says policy direction is given
15 to the institute by a board of directors consisting
16 of executives of its member companies.

17 That is what is decided at these executive
18 meetings, the general overall policy of the Tobacco
19 Institute; is that correct?

20 A. Well, I suppose so. I have never attended a
21 meeting, so I really couldn't be specific.

22 Q. The brochure mentions that the activities of
23 the Tobacco Institute are principally conducted in
24 Washington, D.C., headquartered by a professional
25 staff whose members have background in government

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1 journalism, law, education, business, economics and
2 other fields.

3 Who is the professional staff that has a
4 background in law? Do you have anyone there now in
5 that category or immediately before the changes?

6 A. I don't know the backgrounds of each
7 individual employee, present or past.

8 Q. What is the president's background? Is he a
9 lawyer?

10 A. I don't believe he is.

11 Q. What is his background, area of expertise,
12 if you know?

13 A. Prior to coming to the Tobacco Institute, he
14 was for a number of years--and I don't recall how
15 many--with the Distilled Spirits Council of the
16 United States.

17 Q. Is that a trade association for the liquor
18 industry?

19 A. It is a trade association, as I understand
20 it, for the companies that make and distribute
21 distilled spirits.

22 MS. ROSENBLATT: Page 71, Line 8.

23 Q. What was your role during the period of time
24 when it was proposed that smoking be banned on
25 airplanes, domestic flights?

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1 A. I responded to inquiries from reporters for
2 interviews, for information, for background. We
3 received also a great many calls from the general

4 public who were angry that there was a proposal to
5 ban smoking on airplanes.

6 Q. What did you tell them?

7 A. One of the things we told them was that we
8 thought there were good reasons not to proceed with
9 such legislation and we were presenting that
10 information to Congress.

11 Q. What were the good reasons not to proceed
12 with that legislation?

13 A. For example, the evidence being cited by
14 some to support a ban did not establish that
15 environmental tobacco smoke was a cause of disease
16 in nonsmokers.

17 We felt, based on studies that had been done
18 on aircraft, that there were certain things having
19 to do with ventilation of aircraft that needed
20 attention and weren't being addressed by this
21 legislation.

22 Any additional things, I would have to look
23 at the files to see exactly what we were saying at
24 that time.

25 Q. What files are you referring to?

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1 A. Press releases we may have issued. Any
2 summaries of the scientific information as it
3 existed at the time.

4 Q. Did you ever read the EPA report?

5 A. Of this year?

6 Q. Well, the EPA report that got all the
7 publicity and attention condemning environmental
8 tobacco smoke as a carcinogen.

9 A. I believe you are talking about the one
10 issued in January of this year.

11 Q. Correct.

12 A. I did not read that report.

13 Q. Why not? I mean, wouldn't you have thought
14 by reading it you might be in a better position to
15 answer questions having to do with that issue?

16 A. It was an extremely technical document and I
17 did not feel that I could read it and fully
18 understand the issue because of its technical
19 complexity.

20 Q. But you never attempted to read it?

21 A. I made an attempt, but quickly saw that it
22 was not something that I would be able to fully
23 understand.

24 MS. ROSENBLATT: You would continue
25 that on Line 10.

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1 Q. Did you have access to anyone or did you try
2 to get some person with a more technical background
3 connected with the tobacco industry to put it in a
4 more understandable form for you?

5 A. We, as I understand it, had contact with
6 scientific consultants who had been following the
7 issue and who were very well acquainted with the
8 material that was in the report.

9 Almost all of it was a matter of public
10 knowledge in advance anyway, because so much had

11 been published in the scientific literature and
12 these consultants were monitoring the literature and
13 telling us what it said and pointing out some of the
14 inconsistencies and the flaws, and they did the same
15 with respect to the report itself.

16 MS. ROSENBLATT: Line 25.

17 Q. Can you name any of these consultants?

18 A. Right off the top of my head, no. I would
19 have to look and see if I have any of their names.

20 MS. ROSENBLATT: Let me see I think the
21 next is 90. Page 90, Line 23.

22 Q. You are quoted in the Washington Post back
23 in April of 1998 as saying if we are attacked, we
24 are not going to roll over and play dead.

25 MR. RUSS: 1988. I think you said '89.

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1 Q. You were quoted in the Washington Post back
2 in April of 1988 as saying, "If we are attacked, we
3 are not going to roll over and play dead. As soon
4 as our adversaries learn that, the less difficulty
5 they are going to find themselves in," end quote.
6 What did you mean by that?

7 I handed the witness the article. You are
8 reading that Washington Post article where that
9 quote I read to you is contained.

10 Okay. You have read the article. You
11 remember my question?

12 A. Would you restate it?

13 Q. Yes. You were quoted as saying, "If we are
14 attacked, we are not going to roll over and play
15 dead, the sooner our adversaries learn that, the
16 less difficulty they are going to find themselves
17 in."

18 My question is, what did you mean by that?

19 A. That we were certainly going to vigorously
20 defend our industry, and we certainly were not going
21 to allow our adversaries to win any issue without
22 opposition.

23 Q. Who are your adversaries? Your adversaries
24 are all those people that are convinced that
25 cigarette smoking causes cancer, heart disease,

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1 emphysema and other diseases? Those are your
2 adversaries, right?

3 A. Depends on the forum. Our adversaries may
4 be political or they may be antismoking
5 organizations. It depends on the issue.

6 MS. ROSENBLATT: I think that's it.

7 That's the end of the deposition. You wanted to go
8 home? All right. It's Friday afternoon. You've
9 put in a good day, folks. Let's see. How did we
10 figure this thing out.

11 MR. ROSS: Tuesday.

12 THE COURT: Tuesday, because we have to
13 take Monday to get ready for Tuesday. So we are
14 going to be working all day on Monday. So rather
15 than have you folks come in and out, we'll let you
16 folks come in Tuesday so we can get a lot of stuff
17 done. Good home. Enjoy the weekend. Do not watch

18 TV or read newspapers or talk about this case.
19 (The jury exited the courtroom and the
20 following proceedings were had:)
21 THE COURT: Have a seat, folks. Now,
22 let's see if we can finish up. I went through
23 Chilcote, so I guess I have to give you some
24 designations on that.

25 MS. ROSENBLATT: Right. Great. At
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1 least get that one out of the way.
2 MS. ROSENBLATT: Okay.
3 MS. LUTHER: If we are not involved in
4 that, Your Honor, may we be excused?

5 THE COURT: Yes, ma'am.
6 Okay are you ready with me?
7 MS. ROSENBLATT: Yes.
8 THE COURT: Page 12, Line 25; Page

9 13---

10 MR. ROSS: I'm sorry. You got ahead of
11 me.

12 THE COURT: No. This is one in the
13 whiskey business. That's okay. I don't care about
14 the whiskey business. That's okay.

15 MR. ROSS: So that's in or out?
16 THE COURT: That's in.

17 MR. ROSENBLATT: Judge Cohen is
18 studying your videos here.

19 THE COURT: Oh, God, I hope he doesn't.
20 That's the only trouble with high profile.
21 Everybody is looking at you like you're in a zoo.

22 MS. ROSENBLATT: Try not to think about
23 it.

24 THE COURT: To tell you the truth, I
25 don't. And I really forget that there's a camera in
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1 the courtroom and all, and so the demeanor is
2 different. I'm just me and that's it. I can't do
3 anything about it.

4 There's a lot of stuff here, Page 17 and 18,
5 which is background, but nothing really serious.

6 Line 20, Page 20, that is.

7 MR. ROSS: I'm sorry. 17 is out?

8 THE COURT: No. I mean, one way or the
9 other, it depends on how you look at it. It's just
10 his background and moving. It's a career move.

11 MR. ROSS: I agree. I was just trying
12 to shorten it.

13 THE COURT: I realize that, but,
14 whatever.

15 Page 20, Line 10 through 25 is out.

16 MS. ROSENBLATT: Excuse me. I didn't
17 hear. 10 through 25?

18 THE COURT: Page 20, Line 10 through
19 25. That's money. We did that with the others.

20 And Line 21 through 13--no--through 10, 11,
21 12 is okay.

22 MR. ROSS: I did miss one objection
23 that I wanted to give you when we get to Page 29.

24 THE COURT: 29.

1 THE COURT: I'm on 29 now.

2 MR. ROSS: I did mean--I don't know if
3 it was marked on yours. It's marked wrong on my
4 copy. I did mean to object to Lines 3 to 14.

5 THE COURT: What?

6 MR. ROSS: 3 to 14.

7 THE COURT: "Have you ever read the EPA
8 report?"

9 "No, sir."

10 MR. ROSS: I thought we had this
11 question.

12 MS. ROSENBLATT: Well, this was the
13 president, a different person.

14 MR. ROSS: I know. They ask every
15 different person in the Tobacco Institute.

16 THE COURT: It's important that he read
17 it, and if it comes up as to yes, he should have
18 read it, then it becomes relevant.

19 MR. ROSS: I don't know why it is
20 important that he read it.

21 MS. ROSENBLATT: Well, they are stating
22 positions on it and answering questions on
23 secondhand smoke.

24 THE COURT: That's what I'm saying.

25 MR. ROSS: I don't think you're going

1 to find that this person did, but.

2 THE COURT: Okay. Leave it in.

3 MR. ROSS: Okay.

4 THE COURT: Now 33.

5 MS. ROSENBLATT: Yes.

6 THE COURT: Line 6 and 7 and 8 contains
7 surplusage. I cut out on Line 6, for example, "Or
8 there was an order of court, you got a call from
9 your lawyer saying," and it should read, "If I said
10 to you we want to see every press release."

11 MS. ROSENBLATT: Okay.

12 THE COURT: That makes more sense.

13 MS. ROSENBLATT: Okay.

14 THE COURT: Let's see where we go.

15 MR. ROSS: If I might make a
16 suggestion. I didn't state an objection at the time
17 because I didn't know how many of these were going
18 to get read, but if you look at Page 34, do we
19 really need to ask the fourth straight person where
20 do meetings take place and how many meetings a year
21 do they have? We read that to the jury four times.

22 THE COURT: I mean, you can understand
23 that when they depositions are given, you don't have
24 all the information and it becomes a problem.

25 MR. ROSS: I didn't know which order we

1 were going to do them in, but I suggest we take that
2 out because I think every single one of the three
3 previous people said the meetings take place a

4 Washington.

5 MS. ROSENBLATT: There were two prior
6 people. We didn't have Lauria.

7 MR. ROSS: We had Kornegay.

8 MS. ROSENBLATT: You're right.

9 THE COURT: The point is, if it's
10 repetitious and relevant and substantive, all those
11 three, then it makes a difference. If it isn't---

12 MR. ROSS: I'm not saying it's
13 prejudicial. If they want it in, no problem.

14 THE COURT: Let's keep going with it.
15 We spend more time talking about it.

16 Page 41, Line 20 through 25. The whole page
17 of 42. And Line 1 and 2, I guess of 43.

18 I'm on 53. We talk here about budget.

19 MS. ROSENBLATT: I think that's
20 relevant since they are in the communication
21 business and communicating the position of the
22 tobacco industry. This has nothing to do with the
23 value of the tobacco companies or market share or
24 anything like that.

25 MR. ROSS: Well, they are also a
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1 defendant in this case and it's not relevant to
2 anything other than the size of the Tobacco
3 Institute.

4 MS. ROSENBLATT: Well, it's a
5 not-for-profit type I think corporation. I mean,
6 they are not--their budget from the tobacco
7 companies in terms of communicating to the public
8 and their position. I think it's relevant
9 information.

10 MR. ROSS: You'll see on the next page
11 they're talking about rents, the computers, the
12 overhead.

13 THE COURT: Let's see.

14 MS. ROSENBLATT: Just explains how it
15 functions. I mean, not everyone is familiar. I
16 certainly wasn't with what a trade association does
17 and how it functions.

18 MR. ROSS: I think we have now
19 explained that two or three times to the jury. I
20 don't think we need to know the total budgetary
21 operation of \$38 million and how much went for
22 computers and how much went for employee benefits.

23 MS. ROSENBLATT: I don't see how it's
24 prejudicial. I think it's relevant.

25 MR. ROSS: It's prejudicial. It's
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1 talking about the size of R.J. Reynolds Tobacco
2 Company.

3 THE COURT: It says how much money was
4 spent in promotion, I guess.

5 MS. ROSENBLATT: It's like the Council
6 for Tobacco Research. They, themselves, have put
7 in, and I believe the Brown & Williamson CEO, Nick
8 Brookes, talked about it would be eight hundred
9 million dollars in today's money what we have spent
10 on research. This is what they are spending on, you

11 know, communicating to the public and this is the
12 trade association organizations. It's similar.

13 THE COURT: Well, they break it down
14 here.

15 MS. ROSENBLATT: It's a paragraph or
16 two. It's certainly not in any way prejudicial to
17 them.

18 MR. ROSS: I disagree. We are a
19 defendant. We are being sued for punitive damages,
20 so to show our total budget is \$38 million, it talks
21 about the worth of this defendant.

22 MS. ROSENBLATT: How about them saying
23 they spent eight hundred million? They wanted to do
24 that for the Council for Tobacco Research.

25 MR. ROSS: I'm not the Council for
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1 Tobacco Research. Since we haven't put our case on,
2 I don't think we volunteered anything.

3 MS. ROSENBLATT: The other defendants
4 have volunteered the fact that how much is spent on
5 that.

6 THE COURT: This doesn't answer the
7 question, really, as to how much is spent in the
8 actual promotion.

9 MR. ROSS: No, it doesn't. It's the
10 total budget of the operation.

11 THE COURT: I'll leave it out.

12 MS. ROSENBLATT: Well, it explains it
13 on the next page, I think.

14 THE COURT: Not really.

15 MS. ROSENBLATT: Public affairs, 13
16 million. That public affairs is what they're doing
17 in terms of promotion.

18 MR. ROSS: Public affairs could
19 encompass almost anything.

20 THE COURT: The business of TI is --

21 MR. ROSS: For the trade association.

22 THE COURT: What does that mean?

23 MR. ROSS: It means, as the other
24 witnesses have explained, we present, when asked,
25 the industry's position on issues like excise taxes.

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1 THE COURT: Public relations,
2 communications?

3 MR. ROSS: Public relations,
4 communications, yep.

5 THE COURT: For that purpose. Okay.

6 Well, in that regard, I'll go ahead and
7 leave it in, then. I think it boils down to about
8 13 million for public affairs. Okay.

9 MR. ROSS: Most of that has nothing to
10 do with smoking and health. That's the problem.
11 They deal with federal excise taxes.

12 THE COURT: They promote the industry's
13 position, is what she said.

14 MR. ROSS: Right. But as some of the
15 witnesses have said, rarely is it smoking and
16 health. They spend a lot of time on federal excise
17 taxes than on anything else. They spend far more

18 time on that than they ever do smoking and health
19 issues.

20 THE COURT: I think she mentioned that.
21 All right. 16 through 22, political
22 contributions.

23 MS. ROSENBLATT: Just explains that
24 they have a PAC.

25 THE COURT: They have a PAC.

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1 MS. ROSENBLATT: Which is something
2 that not everyone is aware of. That's what trade
3 associations have. It's not prejudicial to them; it
4 just states how that functions.

5 MR. ROSS: I also suggest it's also
6 irrelevant to the case.

7 THE COURT: I can't hardly hear you.

8 MR. ROSS: It's irrelevant to the case.
9 So why are we putting it in?

10 THE COURT: A lot of this is irrelevant
11 to the case.

12 MR. ROSS: Amen.

13 THE COURT: I don't know.

14 MR. ROSS: Puts it back before the
15 jury, again, suggests -- leaves some sort of
16 inference. I don't know the reason why they're
17 putting it in. There's something wrong with this.
18 Or to use the expression they were using the other
19 day --

20 THE COURT: I'm not exactly sure where
21 they're going to go with it, what argument. But if
22 there's some argument they can make for it, I
23 suppose as to -- that's relevant. How much they
24 could have spent, should have spent, would have
25 spent or whatever, or spending all the money in

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1 doing something that was not what they were supposed
2 to do, I don't know.

3 MR. WHITING: Your Honor, how can he
4 make that argument without the evidence?

5 THE COURT: That's what I'm waiting
6 for, to see what happens here.

7 MR. ROSS: There is none, in this
8 deposition or any of the other three that we've
9 already had from the TI.

10 MS. ROSENBLATT: I don't agree with
11 that interpretation.

12 THE COURT: Well, of course you don't
13 agree with it, but the question is, where's the
14 beef?

15 MS. ROSENBLATT: When you see all the
16 documents -- whether there's this much, with the
17 tobacco, that they themselves have produced,
18 propaganda, total lies, there being no proof,
19 everything is harmless.

20 Secondhand smoke is harmless, in terms of
21 what they are providing to the government, to the
22 public, to smokers, to nonsmokers; what they are
23 publishing in newspapers, magazines; a media blitz
24 of basically misleading and misstatements, including

25 to Congress. I mean, that's where -- I think that's
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1 relevant.

2 THE COURT: You think that's where this
3 money is being spent?

4 MS. ROSENBLATT: Yes.

5 MR. ROSS: Now we are talking about
6 political contributions, through a PAC. What does
7 that have to do with anything she just said?

8 THE COURT: I agree.

9 MS. ROSENBLATT: That's part of --

10 THE COURT: 16 through 22 is out, as
11 well as 17 through 25 of the next page, 55. And 56,
12 1 through 6.

13 MS. ROSENBLATT: Okay. So 16 to 22 is
14 out.

15 MR. MARTINEZ: I'm leaving on a high
16 note. We won something. I'm out of here.

17 MS. ROSENBLATT: Always the jokester.

18 MR. ROSS: I think that would include
19 57 also, 2 through 9.

20 THE COURT: I don't want to get into
21 areas of -- 58, 6, 7, 8, is out.

22 60, now he's telling us about all he knows,
23 social friends with everybody in Congress.

24 MS. ROSENBLATT: Well, that explains
25 his position as president and what he's doing and

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1 what's going on.

2 MR. ROSS: The fact that he plays golf
3 with three U.S. senators, that's relevant?

4 THE COURT: Well, the question is:
5 What do they talk about when they play golf?

6 MR. ROSS: There isn't anything here
7 about what they talk about on the golf course.

8 MS. ROSENBLATT: I'm sure secondhand
9 smoke.

10 MR. ROSS: While they're playing golf.

11 MS. ROSENBLATT: If it's so innocuous,
12 there is no prejudice or harm.

13 THE COURT: The question is: Is he
14 using his relationship to influence Congress?
15 That's the point.

16 MR. ROSS: And there's nothing here to
17 that effect.

18 THE COURT: Well, playing golf with a
19 congressman is better than you and I can do. Well,
20 I don't know about you.

21 MR. ROSS: My playing golf with anybody
22 is probably --

23 THE COURT: Well, further on down, is
24 this the one that knows all the presidents?

25 MR. ROSS: He doesn't know as -- that

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1 was Kornegay. Kornegay knew more. This guy knows a
2 few, I think.

3 MS. ROSENBLATT: I don't see where

4 there's any -- this is just relationships.

5 THE COURT: Okay. It's really of no
6 relevancy to what we are talking about, if you don't
7 follow up on it. It wasn't followed up.

8 MS. ROSENBLATT: I think it's in the
9 realm of what his position is.

10 THE COURT: He's a big shot.

11 MS. ROSENBLATT: It's not a coincidence
12 that the people that are running these organizations
13 are very involved.

14 THE COURT: But you have to show a
15 nexus, and there isn't any, other than maybe he's a
16 better golfer. I don't know.

17 MS. ROSENBLATT: Well, the relationship
18 with congressmen and the situation and what exists.

19 THE COURT: No, I'm going to leave it
20 all out. 57, 61 -- I mean 60 and 61. We get down
21 to the nuts and bolts here.

22 MR. ROSS: I think the next objection
23 was 68. Because at this point it's totally
24 cumulative.

25 MS. ROSENBLATT: Well, he's the

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1 president.

2 THE COURT: No, he's the big shot.

3 MR. ROSS: Then we shouldn't have them
4 asking the last three people, because it's the same
5 question.

6 THE COURT: He likes to play golf with
7 Bob Sheaffer, of the media.

8 MR. ROSS: Yeah, of CBS.

9 THE COURT: So 9 through 15.

10 MS. ROSENBLATT: Where are we now?

11 THE COURT: 72. Yeah, he talks to the
12 president.

13 MS. ROSENBLATT: So you are taking out
14 9 through 19.

15 MR. ROSS: That's on 72?

16 THE COURT: Yeah. Back on 73 now.

17 Have you met President Clinton? Yes, sir. So
18 forth, so on. Actually knows the President. What
19 has that got to do with anything?

20 MR. ROSS: He actually says he knew him
21 when he was Governor.

22 THE COURT: Yeah, he knew Bush.

23 MS. ROSENBLATT: Well, he went to
24 Bush's wedding.

25 THE COURT: He does answer: Part of my
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1 job I guess here in Washington is to know different
2 people.

3 MS. ROSENBLATT: That's why the earlier
4 questions should really be in. That's part of what
5 he's doing. That is part. I had forgot that he had
6 said that.

7 MR. ROSS: He then goes on to say he
8 went to President Bush's daughter's wedding because
9 he was a life-time friend of the young man who was
10 marrying President Bush's daughter; not because

11 President Bush invited him.

12 THE COURT: What an in for influence.

13 MR. ROSS: Yeah, what an influence.

14 THE COURT: No, what an in for

15 influence.

16 MR. ROSENBLATT: And you put this
17 together, Judge. Kornegay quit Congress, he wanted
18 to go back to Greensboro. 25 years later, he goes
19 back to Greensboro because -- he wants to leave
20 Washington because he gives all these family
21 reasons.

22 THE COURT: So let's talk about all
23 that. He's a real big shot, knows all these
24 presidents. He can work his way around through
25 Washington and all the cocktail parties and

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1 everything. The next question is: So what?

2 MS. ROSENBLATT: We're going to get you
3 a T-shirt, "So what." We were talking about it.

4 MR. ROSENBLATT: The "so what" is
5 people can draw reasonable inference from that.

6 THE COURT: Reasonable inference of
7 what, lobbying?

8 MS. ROSENBLATT: That's part of his job
9 responsibilities, part of what he's expected to
10 do --

11 MR. ROSENBLATT: Clout.

12 MS. ROSENBLATT: -- to have these
13 relationships. That's part of the reason why it is
14 so difficult and it takes so long for, you know,
15 things to happen. That's part of how they
16 communicate.

17 MR. ROSS: Then that's my problem.
18 They want to try to draw that inference.

19 MR. WHITING: How does that connect to
20 any breach of any legal duty?

21 THE COURT: I agree. When you talk
22 about where this case is going, that's a real
23 stretch.

24 It's nice to be able to talk to people about
25 it, but -- so we're out from 73, Line 25 through 74,

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1 to Line 18, or 17, and 75 through 25. 76, 1 through
2 13, and 14 through 16. Okay.

3 MS. ROSENBLATT: Now where are we?

4 We're on 76?

5 THE COURT: Now we're on 77.

6 MS. ROSENBLATT: Well, Line 17.

7 THE COURT: No, that's all right.

8 MS. ROSENBLATT: Page 76 is in, so
9 that's in?

10 MR. ROSS: Yeah, he didn't take that.

11 THE COURT: Now -- tenuous.

12 MS. ROSENBLATT: Well, I think it's
13 perfectly appropriate to ask him, you mean Line 3,
14 the question. He wouldn't as president keep someone
15 if they didn't say --

16 THE COURT: Toe the line.

17 MS. ROSENBLATT: Yeah, I think that's

18 appropriate to ask.

19 THE COURT: I left it in. I didn't
20 take it out.

21 MR. ROSS: This is the tobacco industry
22 trade association. That is their job.

23 THE COURT: To do what?

24 MR. ROSENBLATT: To lie to the American
25 people?

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1 THE COURT: To play golf with the
2 President?

3 MR. ROSS: No, to state the industry's
4 position. That's what a trade association does.

5 THE COURT: But if you state your own
6 position, your personal position, and not the
7 industry's position, the question is: Would he be
8 fired?

9 MR. ROSS: Because he wouldn't be doing
10 his job.

11 THE COURT: Then he would be fired.
12 That's what he said.

13 MR. ROSS: I don't know what the
14 relevance is of that.

15 THE COURT: The relevance is, they make
16 him toe the line. He sees the relevance.

17 MR. ROSENBLATT: He sees the relevance,
18 Judge. Have not you caught on? Anything that
19 hurts, he says he doesn't see the relevance.

20 THE COURT: All right. Where are we
21 at?

22 MS. ROSENBLATT: Near the end, I hope.

23 THE COURT: I, for some reason,
24 bracketed Line 24 through Page 78, Line 11, because
25 I think --

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1 MR. ROSS: Yeah, he rephrased it.

2 THE COURT: He rephrases it. That's
3 what it is. Yeah.

4 MR. ROSS: The question is withdrawn,
5 and there was never an answer.

6 THE COURT: So comes in on Page 78,
7 Line 18.

8 MR. ROSS: Right.

9 MS. ROSENBLATT: He said, I'll be happy
10 to rephrase it.

11 THE COURT: Yeah. Now we get to the
12 liquor business, Page 80, Line 25, and alcoholism --
13 I don't think that's any part of this case. So I
14 took out 1 through 9 on Page 81.

15 We get to Page 9 -- talking about Tom Lauria
16 and that article. I left that in. Except to Page
17 80, Line 18 through 25 --

18 MS. ROSENBLATT: Up through where?

19 THE COURT: Up through Line 24. I'm
20 sorry, Line 24.

21 MR. ROSS: 18 through 24 on 91, that's
22 out?

23 THE COURT: Yeah, that's out.

24 MS. ROSENBLATT: That's out on 18

25 through 24.

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1 THE COURT: Yeah, that's out.

2 And the next question, 24 -- 25, and 92,
3 Line 1 through 7 is out also.

4 MS. ROSENBLATT: That's 92, 1 through 7
5 is out?

6 THE COURT: Yeah.

7 99, let me start talking about everybody's
8 salary range. All that's out. Page 99, top of 100.
9 102, really repetitious.

10 MS. ROSENBLATT: Okay. We can take
11 that out.

12 THE COURT: 5 through 15.

13 MS. ROSENBLATT: Okay.

14 THE COURT: 103, the wonderful
15 hypothets. 15 through 25 is out.

16 104, 1 through 8 is out. Now we're talking
17 about 105, and we were talking about this tar --

18 MR. ROSS: Yes, repetitive.

19 THE COURT: Yes, it is repetitive.

20 I've marked it out because we've been through that
21 before. 21 through 25, that's the same old
22 question, which is out. I think that may be it.

23 No, there's one more here. Oh, no. Same
24 question on 113 and 114.

25 MR. ROSS: Tried it again at the end.

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1 THE COURT: Okay. For whatever value
2 it has.

3 MR. ROSS: All right.

4 THE COURT: All right.

5 So what's next?

6 MR. ROSS: I think that's it. That's
7 all the TI people.

8 MR. ROSENBLATT: Could you reconsider
9 playing golf with the President?

10 MS. ROSENBLATT: That's part of his
11 job.

12 THE COURT: Only if he doesn't cheat.

13 MR. ROSENBLATT: You know, that's such
14 access. That's such clout. President with --
15 everyone knows --

16 MR. ROSS: Hold it. He didn't play
17 golf with the President. A couple senators. You
18 got the wrong people.

19 MR. ROSENBLATT: Well, it was Senator
20 Clements, who actually made the job offer, you'll
21 remember, to Kornegay. Isn't this an incestuous
22 thing?

23 THE COURT: Clout to do what?

24 MR. ROSENBLATT: To have access. It
25 doesn't cause -- you know, hey, doesn't cause

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1 anything, doesn't cause anything. That's worth a
2 lot.

3 MS. ROSENBLATT: Promulgate --

4 MR. ROSS: Just as the senator was
5 putting, he whispered in his ear.

6 THE COURT: If you want to get into the
7 conversation they said about listening, I won't tell
8 them that you're really only lying for --

9 MS. ROSENBLATT: Reality of those
10 relationships know more than.

11 THE COURT: But it's supposition, you
12 know. This is where the problem is.

13 MS. ROSENBLATT: But it's part of their
14 job. It really is part of his job where he actually
15 said it.

16 THE COURT: To butter up the
17 higher-ups?

18 MS. ROSENBLATT: To cultivate the
19 relationships.

20 THE COURT: Unless you can show the
21 nexus, what he got out of it, I don't have anything.

22 If you can show that because he did that,
23 they passed this legislation or didn't pass the
24 legislation, or did something that would favor the
25 tobacco industry, that you can definitively say it

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1 happened, different story. But you can't.

2 MR. ROSS: We ought to bring you guys
3 T-shirts that say "never give up."

4 THE COURT: Let's put it this way. I
5 once met President Kennedy, and I had cocktails with
6 Dean Russert. Now you want to make something out of
7 that? Is there an inference to that?

8 MR. ROSS: So you were responsible
9 for --

10 MS. ROSENBLATT: But you were probably
11 a state attorney that was legitimately doing his
12 job.

13 THE COURT: No, I was a newscaster at
14 the time, a news reporter.

15 MR. ROSENBLATT: You didn't want
16 anything?

17 THE COURT: I wanted a story, which I
18 didn't get.

19 MR. MOODHE: Your Honor, before you
20 leave, I know you are taking home the Booberg
21 deposition over the weekend.

22 THE COURT: Who is Booberg?

23 MR. ROSENBLATT: American Thoracic
24 Society.

25 MR. MOODHE: The fellow I talked about

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1 yesterday.

2 MS. ROSENBLATT: We can argue that
3 Monday. I have -- we have the objections and --

4 MR. MOODHE: I wanted to remind Your
5 Honor that after you had so laboriously and
6 tediously pruned today, you have an opportunity to
7 bring out the power tool with Carl Booberg. He
8 shouldn't testify at all for reasons that I reminded
9 Your Honor, and --

10 THE COURT: I don't know, that's your

11 position.

12 MR. MOODHE: If you were going to look
13 at it over the weekend, I wanted to ask you perhaps
14 first to look at a portion of the transcript that
15 might save you a great deal of time and trouble.

16 THE COURT: Which portion?

17 MR. MOODHE: Booberg. If you are not
18 looking at it over the weekend, I won't trouble you.

19 MS. ROSENBLATT: My suggestion would
20 be, have a peaceful weekend. It will be a long day
21 Monday.

22 MR. SCHNEIDER: I saw you put Johnson
23 in there. That's Booberg. (Handing)

24 THE COURT: I already read it. It's
25 speed reading. All right. I'll look at it and see

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1 what's in there.

2 MR. MOODHE: If you are going to look
3 at it, Your Honor, if you could focus on just five
4 or six pages, I think you'll see what I'm talking
5 about.

6 THE COURT: Are they in sequence?

7 MR. MOODHE: Pages 69 through 77 and
8 Page 86.

9 THE COURT: Let me mark it.

10 MS. ROSENBLATT: I've outlined it.
11 There are other pages that present clearly our point
12 of view, you know. My suggestion is we just go over
13 it, you know, Monday. We have all day.

14 THE COURT: It's too long to go over.
15 No, I want to get familiar with it. It's a lot
16 easier if I -- I may not. I may decide the heck
17 with it. But if I have nothing better to do and the
18 ballgame isn't any good -- and you said --

19 MR. MOODHE: 69 through 77, and Page
20 86.

21 THE COURT: All right. Is that an
22 undue influence on this thing so I won't read
23 theirs?

24 Which ones do you want me to read? Any
25 special page you want me to --

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1 MR. ROSENBLATT: We wouldn't have the
2 nerve to ask you to focus in on a few particular
3 pages which help us.

4 MS. ROSENBLATT: We'll argue it Monday.
5 We've got positions that --

6 THE COURT: Let me tell you something.
7 What are we going to do with the six alternates when
8 they find out that they're alternates, and they may
9 not have to decide this case? I think there will be
10 a rebellion.

11 MR. ROSS: I'm leaving the courtroom
12 before you tell them.

13 THE COURT: I really had been under the
14 impression we would lose a few along the line
15 because of the length. So far they have been happy
16 as a pig in mud.

17 MR. ROSENBLATT: This is a fascinating

18 case. That's why they're happy. They know they are
19 on something very significant.

20 MS. ROSENBLATT: Maybe we could
21 stipulate to have the whole panel as a jury.

22 THE COURT: We could have a 12-person
23 jury.

24 MS. ROSENBLATT: That would make
25 headlines.

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1 THE COURT: I expected to lose a few.
2 So they're very good.

3 MR. ROSENBLATT: You were tough on them
4 the first day after, you lost two of them.

5 MS. ROSENBLATT: That was so
6 surprising. And once it started, not a one.
7 Nobody's been out for a few hours.

8 THE COURT: Just brought it up.

9 MS. ROSENBLATT: Your clerk has kept
10 them all very happy. And your bailiff.

11 (The trial was adjourned at 4:35 p.m.)

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